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Ri. Raynsford.

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PLEAS OF THE CROWN.

Or a Brief, but Full

ACCOUNT

OF

Whatsoever can be found Relating to that Subject.

by Sir Matthew Hales.

LONDON,
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Marks for the Authors cited in this Book.

C.P.C. *Coke's Pleas of the Crown.*
S.T.C. *Samford's Pleas of the Crown.*
Crom. *Crompton's Juſtice.*
Dal. *Dalton's Juſtice.*
Co. Lib. 4. *Coke's Fourth Report.*
9. R. *Coke's Ninth Report*, &c.

Pleas

PLEAS

OF THE

CROWN.

THIS Treatiſe is divided under theſe Conſiderations;

1. Of the kinds of Offences.
2. Of the Incidents to thoſe Offences.

The kinds of the Offences are distinguished according to the diversity of Laws by which they are introduced, *viz.*

Offences { By the Common Law. / By Statute Law.

Offences by the Common Law distinguish'd according to the degrees of Offence,

{ Capital, / Not Capital.

Of Capital Offences, they are such

1. As are immediately against God.
2. Immediately against Man.

Those that are Offences not Capital by Common Law or Misprisions, may be in breach of Peace,&c.

Offences by the Stat. { Capital. / Not Capital.

The latter are many, and not here to be treated of.

Now

Now 1. concerning Offences Capital, that are immediately againſt Divine Majeſty, which are

{Hereſie, and Witchcraft.

Concerning Hereſie, wherein conſiderable,

I. What is Hereſie? 3 Inſt. p. 39, 40,41,&c.

At this day all thoſe former Acts which determined certain Points to be Hereſie ſtand repealed; and though there be no expreſs Act determining what ſhall be ſaid Hereſie, yet the Statute of 1 *El. c.* 1. directing the High Commiſſion, reſtraining,

1. To what formerly determined Hereſie, by the Canonical Scriptures.

2. To what adjudged ſo by the four firſt General Councels.

3. To what expreſly adjudged Hereſie by any General Councel by expreſs words of Canonical Scriptures.

4. To what ſo determined.

II. Who to judge of Hereſie?

1. The Temporal Judge cannot puniſh any Perſon for Hereſie by Indictment or otherwiſe; but yet he may take knowledge whether a Tenent be Hereſie, or no? As where by the Statute of 2 *Hen.* 4. now repealed, *Cæſar* was committed for ſaying, *Although he was Excommunicated by the Archbiſhop, he was not ſo before God:* and *Warner* commited for ſaying, *Non Tenetur ſolvere decimas*, and thereupon impriſoned. In a *Habeas Corpus* by the former, and ſpecial Juſtification in an Action brought by the latter, adjudged neither Hereſie.

2. All thoſe Statutes that gave power to Arreſt or Impriſon for Hereſie, *viz.* 2 *Hen.* 4. 15. 2 *H.* 5. 17. 5 *R.* 2. *c.* 5. 1 & 2 *Ph.* & *Mar. c.* 6. are repealed by 1 *Eliz.*

III. The way to Convict of Hereſie.

1. By the Common Law.

1. By the Archbiſhops and Biſhops in a General Synod.

2. By

2. By the Biſhop of the Dioceſs.

2. By Stat. 23 *H.* 8. *c.* 9.

By the Archbiſhop in caſe of aſſent or neglect of his Suffragan.

The puniſhment of the party convict of Hereſie.

Upon Certificate of ſuch Conviction, a Writ *De Hæretico Comburendo* granted, without which they cannot proceed to any temporal puniſhment.

But if after Conviction he abjure his Opinion, his life is ſaved.

But if he relapſe after Abjuration, then irrecoverable: But by the Statute 2 *H.* 5. *c.* 7. all Statutes which introduc'd any Forfeiture ſtand repealed: Neither did the Common Law inflict any Forfeiture, becauſe the proceedings were only *pro ſalute animæ*, and now by the Statute of 29 *C.* 2. the Writ *De Hæretico Comburendo* is taken away.

Witchcraft.

WItchcraft at Common Law puniſhed with death, as Hereſie, by Writ *De Hæretico Comburendo.*

The Statute of 1 *Jac.* 12. the only Law now in force againſt it, and divides it into two Degrees.

I. Witchcraft in the firſt Degree made Felony without Clergy, divided into four Species.

1. Invocation or Conjuration of an Evil Spirit,

2. Conſult, covenant with, entertain, employ, feed, or reward any Evil Spirit to any intent, although no act done thereupon.

3. Take up any dead Perſon, or any part thereof, to be employed or uſed in Witchcraft Charm, although not actually uſed or employed.

4. Exerciſe any Witchcraft, Inchantment, Charm, or Sorcery, whereby any Perſon ſhall be killed, de-

deſtroyed, conſumed, or lamed in his or her Body, or any part thereof (which requires the act to be done, *viz.* laming, conſuming.)

Theſe and all Acceſſory before to ſuffer as Felons without Clergy, becauſe not ſpecially excepted.

II. Witchcraft in the ſecond Degree.

1. To take upon them by Witchcraft, Inchantment, Charm, or Sorcery to tell where Treaſure is to be found: They that take upon them to do it, though they cannot, yet within this Law.

2. Or where Goods loſt or ſtollen may be found.

3. Or to the intent to provoke any Perſon to unlawful Love; theſe Clauſes come under the word [take upon].

4. Whereby Goods or Chattels ſhall be deſtroyed (which requires an actual deſtroying, and not a bare taking upon them).

5. Or ſhall uſe Witchcraft to hurt any Perſon, though the ſame be not effected.

The puniſhment of theſe,

1. The firſt Offence a years Impriſonment and Pillory.

2. The ſecond Offence Felony: but this requires

1. An actual conviction and Judgment for the firſt.
2. The ſecond Offence muſt be committed after Judgment for the firſt.

The like in Forgery, Tranſportation of Sheep, &c.

But the Conſequence upon Attainder, *viz.* Corruption of Blood, and loſs of Dower and the Lands Forfeiture, ſaved.

3 Inſt. p. 47. And Note, a Saving againſt Corruption of Blood ſaves the Deſcent; and ſaving the Land to the Heir prevents corruption of Blood as to that.

Concerning Offences againſt men immediately diſtinguiſhed in the Judgment or Event, Capital, or not Capital.

Capital, either by Common Law or Statute, and theſe either Treaſon or Felonies.

Trea-

Treaſon, either { High Treaſon, or Petty Treaſon.

High Treaſon.

AND this is thought an Offence at Common Law; yet becauſe there be ſome mixture of Introductions of new Treaſons by Statutes, would be conſidered together.

1. Conſidering High Treaſon, it is diſtinguiſhed into four kinds.
   1. That which concerns immediately the King, his Wife, or Children.
   2. That which concerns his Office in the Adminiſtration of Juſtice.
   3. That which concerns his Seal.
   4. That which concerns his Coyn.

Before we come to theſe Particulars,

lars, ſome things to be generally premiſed.

1. That thoſe that have ſuch diſability upon them that diſables them to act reaſonably, cannot commit Treaſon, *viz. Non compos mentis*, and Infants within Age of diſcretion; yet Quære 3 *H.* 7.

3 Inſt. p. 4, 6. And therefore if a Traytor becomes *Non compos mentis* before Conviction, he ſhall not be Arreigned; if after Conviction, he ſhall not be executed.

3 Inſt. p. 4, 5. An Alien Enemy, committing an hoſtile act, dealt with as an Enemy.

An Alien Army committing any Treaſon are Traytors within the Law.

2. The Statute of 25 *E.* 3. reduced and ſettled all Treaſons, and by that means all Treaſons that were before are reduced, and the 1 *Ma.* reinforced the Statute 25 *E.* 3. and reduced all new Treaſons to the old Standard of 25 *E.* 3. and ſo all Treaſons declared between 25 *E.* 3. and 1 *Ma.* were abrogate.

3. All

3. All Treaſon includes Felony, therefore if the Indictment want *proditoriè*, a Pardon of all Felonies diſcharges it.

Now concerning the kinds of High Treaſon.

Compaſſing and imagining the death of the King, Queen, or Prince, and declaring the ſame by ſome open Deed.

I. What is a Compaſſing the death?

Declaring by an open act a deſign to Depoſe or Impriſon the King, is an Overt act to manifeſt the compaſſing of his Death. 3 Inſt. p. 6, 12, 38.

II. What a King?

1. A King before his Coronation, a King within this Statute when the Crown deſcends upon him. 3 Inſt. p. 7.

2. A King *de facto*, and not *de jure*, a King within this Act, and a Treaſon againſt him is puniſhable, though the right Heir get the Crown. Ibid.

3. A Titular King, that is not Regnant; as the Husband of the Queen

Queen not a King within this Act, and the Stat. 1 & 2. *Ph. & Ma. c.* 10. but the Queen is.

4. The right Heir to the Crown, yet not in Poſſeſſion, therefore is not a King within this Act.

III. What the King's Wife?

3 Inſt. p. 9. It extends not to the Queen Dowager.

IV. What the eldeſt Son and Heir of the King within this Act?

The ſecond Son, after the death of the eldeſt, within the Act.

The eldeſt Son of the Queen Regnant within the Statute.

Ibid. The Collateral Heir apparent, as *Roger Mortimer* 11 *R.* 2. the Duke of *York* 39 *H.* 6. not Son and Heir within this Act, yet Quære.

V. What an Overt act requiſite to make ſuch compaſſing Treaſon?

3 Inſt. p. 12. 1. An Overt act muſt be alledged in every ſuch Indictment, & proved.

2. Compaſſing by bare words is not an Overt act, as appears by many temporary Statutes againſt it, 1 *El. c.* 6. 13 *El. c.* 1. but the ſame ſet down by him in writing is an Overt act;

act; yet now it has been adjudged that words are an Overt act, and the Law taken accordingly.

3. Conſpiring the death of the King, and providing weapons to effect it, or ſending Letters to ſecond it; aſſembling People to take the King into their power; Lord *Cobham*'s writing Letters to a Foreign King to invade, an Overt act.

Conſpiring to levy War no Overt act unleſs levied, becauſe relates to a diſtinct Treaſon. 3 Inſt. p. 14.

II. Treaſon levying War againſt the King.

1. Conſpiring or compaſſing to levy War, without a War *de facto*, no Treaſon; but if a War levied, the Conſpirators Traytors as well as the Actors: This appears by the Stat. 13 *El. c.* 1. that made ſuch Conſpiracy Treaſon during the Queens life. 3 Car. 2. c. 1.

2. Raiſing a Force to burn or throw down a particular Incloſure only a Riot; but if it had been to have gone from Town to Town, and caſt in all Incloſures, *Bradſhaw*'s caſe; 2 And. p. 4, 5.

or

or to change Religion, or to inhance the Salaries of Labourers, a levying of War, becauſe the Enemy publique.

3. Joyning with Rebels *pro timore mortis*, and receſſed *quam cito potuerunt ad* Caſtles no Treaſon, 3 *Inſt.* 10.

4. Holding a Force or Caſtle againſt the King's Force a levying of War.

III. Treaſon adhering to the King's Enemies, giving them Aid within the Land and without.

1. What adhering?

Giving Aid and Comfort to them; ſurrendring the King's Caſtle for reward?

2. What an Enemy?

The Subject of the King becoming a Rebel, he that out of the Realm ſuccours him, this not adhering to an Enemy within the Clauſe.

3 Inſt. p. 11. An Enemy coming hoſtilely into *England*, ſhall be dealt with as an Enemy executed by Marſhal Law, or ranſomed; but a Subject aſſiſting ſhall

ſhall be dealt with as a Traytor.

The Scots invading *England* in the Queens time adjudged Enemies, though *Scotland* then in Amity. Lord *Herris* Caſe, 3 *Inſt. p.* 11.

3. Within the Land or without, how that Foreign Treaſon ſhall be tried.

1. At Common Law for a Foreign Treaſon the Indictment and Trial muſt be where the Land lies.
2. *Per Stat.* 35 *H.* 8. *c.* 2. yet in Force it may be tried or inquired of in *B. R.* or by Commiſſion in any County where the King appears; the King's Signiture may be either to the Commiſſion or Warrant thereof.

Treaſon done in *Ireland* is within that Statute, *Perrot*'s Caſe. 1 And. p. 262.

Per Stat. 28 *H.* 8. *c.* 15. Treaſon upon the Sea inquirable and triable by Commiſſion in any County; at Common Law it muſt be before the Lord Admiral. Trot. Ab. p. 382.

IV.

IV. Treaſon, Violation.

1. The King's Wife extends not to a Dowager, if ſhe conſent 'tis Treaſon in her.

2. The Prince's Wife, ſame Law as before.

3. The King's eldeſt Daughter then living.

Thus far of Treaſon that relates to the King's Perſon and neareſt Relations, wherein generally

1. There muſt be an Overt act to manifeſt the Evidence, and word of mouth is Overt act, as it has been adjudged, *vide* the Statute of 13 *Car.* 2. *cap.* 1.

2. That it muſt be made appear by manifeſt proof, and not by conjectures.

3. He muſt be lawfully attaint thereof, either by Confeſſion or by his Peers in his life time.

And therefore if a Perſon be ſlain in open War he forfeits nothing, neither can he be attaint in ſuch caſe, but by Parliament.

Thus far of Treaſons relating to the King immediately; now follows that

that which is interpretative Treaſon; Killing the Chancellor, Treaſurer, Juſtice of one Bench or other, Juſtice in Eyre, or of Aſſiſe, or Oyer and Terminer in their place, doing their Offices.

1. This extends but to the Perſons here named, not to the Lord Steward, Conſtable, or Marſhal, or Lords of Parliament.

2. It extends to thoſe only during their Office.

3. It extends only to killing, not wounding without death.

But by Stat. 3 *H.* 7. *c.* 14. compaſſing to kill the King, or any of his Councel made Felony.

Counterfeiting the Great Seal or Privy Seal.

1. It muſt be an actual counterfeiting thereof, compaſſing to do it no Treaſon.

2. Affixing the Great Seal by Chancellor without Warrant no Treaſon.

3. Fixing a new Great Seal to to another Patent is a great Miſpriſion, but no

Treaſon; nor a Counterfeiting within this Statute.

4. Aiders and Conſenters to ſuch Counterfeiting are within this Act.

5. The Counterfeiting of the Privy Sign or Sign Manual no Treaſon within this Act, but made ſo by the Statute 1 *Ma. c.* 6.

V. Treaſon concerning the Coyn.

1. Counterfeiting the Kings Coyn, this was Treaſon at Common Law, and Judgment only as of Petty Treaſon.

But whereas Clipping, &c. is made Treaſon by ſubſequent Statutes, the Judgment is to be hang'd, drawn, and quartered, becauſe introductive of a new Law.

Herein conſiderable,

1. What ſhall be a Counterfeiting, Clipping, Waſhing, and Filing of Mony for lucre or gain, any of the proper mony of the Realm, or of other Realms, allowed to be current

rent by Proclamation, not within this Statute, but made High Treaſon by Stat. 18 *El. c.* 1. but without corruption of blood or loſs of Dower.

2. What is Mony?

This extends only to proper Mony of this Realm.

But now,

1 *Ma. c.* 6. Forging or Counterfeiting Mony made currant by Proclamation, is High Treaſon.

14 *El. c.* 3. Forging of Foreign Coin not current here; Miſpriſion of Treaſon in the Forgers, their Aiders and Abettors.

And Note, the bare forging of the King's Coin, without uttering, is Treaſon.

The ſecond Offence concerning Mony declared Treaſon is, if any Perſon bring into this Realm counterfeit Mony.

1. It muſt be Counterfeit.

2. Counterfeited to the ſimilitude of Engliſh Mony.

3. Brought from a Forreign Realm, and therefore not from *Ireland* barely.

4. Brought knowingly.

5. Brought, and not barely uttered here: But if falſe or clip't Mony be found in his hands, by the Statute *De Moneta* if he be ſuſpicious, he may be arreſted till he have found his Warrant.

6. He muſt merchandize therewith, or make payment thereof.

Concerning High Treaſon made by the ſubſequent Statutes in force.

5 *El. c.* 1. Refuſing Oath of Supremacy upon ſecond tender Treaſon, without corruption of Blood.

Per 5 El. c. 1. Extolling power of Biſhop of *Rome* Premunire, by bringing in Bulls, or putting in execution, or reconciling to the See of *Rome* thereby, Treaſon.

Bringing in *Agnus Dei* Premunire, 23 *El. c.* 1. Abſolving Subjects from Obedience, or reconciling them to Obedience of *Rome*, Treaſon

ſon in 27 *El.* 2. Prieſt coming into *England*, not ſubmitting in two days, Treaſon. The like for Engliſh men in Forreign Seminaries.

Petty Treaſon.

IS confined by Stat. 25 *E.* 3. to three Particulars.

1. Where a Servant kills his Maſter.

This extends to ſome other Caſes:

1. Servant kills his Miſtreſs.
2. Servant kills his Maſter's Wife.
3. Where a Servant upon Malice taken, during his Service, kills his Maſter after departure from his Service.

2. Wife killing her Husband.

If Wife and a Stranger kill the Husband, petty Treaſon in the Wife, Murder in the Stranger.

If the Wife or Servant procure a Stranger to kill her Husband or Maſter, the Procurer acceſſary only to Murder: But if ſhe procure a Servant to do it, Treaſon in both.

3. Eccleſiaſtical, Secular or Regular, kills Superior.

Note, Aiders, Abetters and Procurers to Petty Treaſon are within this Act.

This Act not taken by Equity.

C.P.C. f.20. Son kills Father or Mother, 'tis Petty Treaſon, receiving Meat, Drink, or Wages.

The Judgment in Petty Treaſon for a Man to be hang'd and drawn.

A Woman to be burnt.

Crom.18. Whatſoever will make a Man guilty or principal in Murder, will make him guilty or principal in Petty Treaſon.

But if the Servant kill the Maſter upon a ſudden falling out, this is not Petty Treaſon, but Manſlaughter.

If the Servant or Wife be of Confederacy

federacy to kill the Husband or Maſter, and be in the ſame Houſe, though not in the ſame Room, they are principal, and guilty of Petty Treaſon, for 'tis a preſence.

Of Felonies.

AND firſt of Felonies of death of a Man.

Now for Felonies, they are either by Common Law or Statute Law.

Felonies by Common Law of four kinds:

1. Such as are committed againſt the Life.

2. Such as are againſt the Goods of a Man.

3. Such as are againſt the Habitation of a Man.

4. Such as are againſt the Proceſs of Publique Juſtice.

Felonies committed againſt Life of two Natures.

1. That which is committed againſt his own Life, *Felo de ſe.*

2. Committed againſt another Man's Life involuntarily.

1. *Per infortunium*, and therein of Deodands.
2. *Per neceſſitatem*, in Defence of Juſtice, in defence of ſelf.
3. Voluntary, without Malice, with Malice.

Felo de ſe.

1. The Perſon.
   1. As in other Felonies, ſo in this, the Perſon that commits it muſt be of years of diſcretion, *Compos mentis*, otherwiſe there is no Forfeiture: Therefore if a Lunatick, during his Lunacy, a Man diſtract by force of Diſeaſe, or *Non compos mentis*, kill himſelf, no Felony.
   2. As in other Felonies the death muſt enſue within a year and day after ſtroke.
2. The act may be voluntary, involuntary

involuntary in ſome Caſes. If *A.* aſſault *B.* and *B.* falling down with his knife drawn, *A.* in purſuit to kill *B.* by haſte falls down upon the knife, *A.* is *Felo de ſe*, and forfeits Goods.

But if *B.* was ſtanding on his Defence with his knife drawn, *A.* runs upon the Weapon and kills himſelf, not *Felo de ſe.* Stam.P.C.16. C.P.C.p.54.

3. Conviction.

1. If the Body can be ſeen, then the Conviction before Coroner, *ſuper viſum Corporis*, not traverſable.

2. If not ſeen, then before Juſtice of Peace, and then traverſable by the Executor or Adminiſtrator. C.P.C.p.55.

In the ſame manner, if enquired in *B. R.* in ſame County, traverſable.

4. Forfeiture relates to ſtroke. Villain ſtrikes himſelf, Lord ſeizes his Goods, Villain dies, King ſhall have them.

Of what?

Joint things in Action, all forfeited,

ed, unleſs in caſe of Merchants; Joint things ſeveral Moieties forfeited: But Joint Chattels in Husband and Wife, all Forfeit for Offence of Husband.

Chancemedley Felony of death of another, either involuntary, or voluntary.

Involuntary *per infortunium, ex neceſſitate.*

Involuntary *per infortunium.*

Chancemedley, where a Man doing a lawful act, without intent of hurt to another, and death caſually enſues.

As ſhooting at Rovers, or at a Bird, or hewing a Tree and the Hatchet-head flies off, or a Schoolmaſter in reaſonable manner beating a Scholer, or a Father his Son, or a Maſter his Servant.

Doing a lawful thing that may breed danger, and giving warning; Juſting by command of the Prince.

Crom. 28. C.P.C. 56.

But if the act be unlawful, then death enſuing Manſlaughter or Murder.

Shoot-

Shooting at a Deer in anothers Park, the Arrow glanceth and killeth a ſtander by, Manſlaughter.

Throwing ſtones or ſhooting in the High-way, and death enſuing, Manſlaughter. C.P. C. 56.

But if a man, knowing people paſſing by in the ſtreet, throw a ſtone over the wall, Murder. C. P. C. 57.

Playing at Hand-ſword without command of Prince, death enſuing, Manſlaughter.

So that an unlawful act, without an ill intent, makes it Manſlaughter; with an ill intent, Murder.

And where it is found involuntary *per infortunium*, cauſeth forfeiture of Goods; but a Pardon of Courſe upon Special matter found.

Deodand.

But there is a death *per infortunium* without the default or procurement of another; fall from a Tree, or by a Horſe or Cart; and the thing that occaſions the death is Forfeited and Deodand; wherein conſiderable,

1. What

1. What forfeited as a Deodand.

C. P. C. 58. If a man fall from a Cart or Ship in Freſhwater, 'tis a Deodand; otherwiſe in Saltwater.

2. If an Infant under fourteen be ſlain by fall from Cart, Horſe, or Mill, no Deodand; but if ſlain by a Horſe, Ox, or Mill, then a Deodand.

Dalt. Inſt. c. 97. If a man kill another with any Sword, a Deodand.

2. When forfeited,

When found by Inquiſition, therefore the Jury ought to find the price; this is before the Coroner.

Homicide *ex neceſſitate.*

This of ſeveral ſorts:

1. In reference to Juſtice.

2. In defence of his Perſon, Houſe, Goods, &c.

Homicide *ex neceſſitate* in reference to Juſtice, of ſeveral kinds:

1. In execution of Juſtice.

2. In advancement of Juſtice.

Ho-

Homicide in Execution of Juſtice requires certain preſcripts.

1. That the Judgment given be by one that hath Juriſdiction in the Cauſe.

If a Juſtice of Peace give Judgment in Treaſon, the Execution thereof Murder in Judge and Officer.

But if he give Judgment of Felony in Treaſon, Felony in the Judge, but not in him that executes it.

2. That it be done by a lawful Officer.

Therefore if a Stranger of his own head, or the Judge that gives the Sentence, Executes, when it is to be done by Sheriff, Felony.

3. That it be done purſuant to Judgment.

Judgment to be hang'd, Sheriff beheads him, Felony.

Homicide in advancement of Juſtice in Cauſes
{ Criminal,
{ Civil.

1. In

1. In Cauſes Criminal.

If a Sheriff or Bailiff, having warrant to arreſt a Perſon indicted of Felony, and he will not obey, and ſuffer himſelf to be arreſted, the Bailiff kills him, no Felony.

The ſame if any Perſon purſues upon Hue and Cry, or otherwiſe to arreſt a Felon that flies.

If a Felon arreſted break away from his Conductors to Goal, they may kill if they cannot otherwiſe take him.

But in this latter Caſe there muſt be a Felony done.

If a Priſoner aſſault his Goaler, and he kill his Priſoner, no Felony.

Rioters or forcible Enterers or Deteinors, ſtanding in oppoſition to the Juſtice's lawful warrant, and one of them ſlain, no Felony.

Keeper or Parker may kill hunter, if they fly or defend themſelves.

2. In Civil Cauſes.

Though Sheriff cannot kill a man who flies from the execution of a Civil

Civil Proceſs, yet if he reſiſt the arreſt, the Sheriff or his Officers need not give back, but may kill the Aſſailant; ſo if in the arreſt and ſtriving together, Officer kill him, no Felony.

Now touching all the former Homicides theſe things obſervable.

1. There mnſt be no malice coloured under pretence of neceſſity; for if it be, it alters the Caſe, and makes it Murder.

2. The Party that did the Fact muſt be arreigned, and upon Not Guilty pleaded the Special Matter muſt be found.

3. Upon this Special Matter thus found, the Party is to be diſmiſt without any forfeiture or pardon purchaſed.

Thus of Homicide *ex neceſſitate* in reference to Publique Juſtice: Others there are that are grounded upon Private Intereſt, and they are of two kinds.

1. Juſtifiable, and conſequently inducing

ducing no forfeiture at all, nor needing pardon.

2. Excuſable, and yet inducing forfeiture.

1. Juſtifiable and inducing no forfeiture, where a Perſon comes to commit a known Felony.

1. If a man come to burn my Houſe, and I ſhoot out of my Houſe and kill him, no Felony.

2. If a Woman kill him that aſſaulteth her to raviſh her, no Felony.

3. If Thieves aſſault me in the Highway, or in my Houſe to rob me, I, or any of my Servants kill them, no Felony or Forfeiture.

But if the aſſault in my Houſe were not to rob, but to beat me, &c. there 'twould be only *ſe defendendo*, and Goods forfeited, and a Pardon of courſe to be granted, becauſe they came not to commit a known Felony; for it cannot be judged whether he meant to kill me. If

If one come to enter into my house, claiming Title, and I kill him, Manslaughter. Dal.c.98.

Homicide excusable *se defendendo*, where though it save the Life, yet the Goods are forfeited; this requires these things.

1. It must be inevitable necessity, yet in case of justifiable Homicide, as of a Thief that comes to rob me, or by an Officer resisted in the Execution of an Arrest, the Party need not give back to the Wall. C.P.C.f.56.

But in this Homicide *se defendendo*, the Party that is assaulted not excusable, unless he give back to the Wall. C.P.C.57.

But if the assault be so furious, and in such a place that giving back would endanger his life, he need not give back. Dalt.c.48. C.P.C.56.

A man fights, and then falls to the ground, then flying not necessary.

2. It must be done in his own defence.

C.P.C.56. If *A.* be assaulted by *B.* before a mortal wound given *A.* gives back until he come to the wall, and then in his defence kills *B.* this is *se defendendo.*

But if mortal wound first given, then Manslaughter.

Dal.c.98. Crom.26. If *A.* upon malice *præpense* strike *B.* and then fly to the wall, there in his own defence kills *B.* this is Murder.

But if there be malice between *A.* and *B.* *A.* strikes first, *B.* retreats to the wall, and in his own defence kills *A.* this is *se defendendo.*

If malice be betwixt *A.* and *B.* *A.* assaults *B.* *B.* retreats to the wall, and then kills *A.* in his own defence; if it be in the Highway he shall be discharged, if not, *se defendendo. Copston's* Case.

Thus far of Homicides involuntary.

Ho-

Homicide voluntary is either *ex malitia præcogitata*, or *ſine malitia*, the former Murder, the latter Manſlaughter.

1. Who ſhall be ſaid a perſon killing?

A man that is *Non compos mentis* kills another, this is no Felony; the ſame for a Lunatick during his Lunacy.

But he that incites a madman to kill another is a principal Murderer.

A man dumb kills another, Felony.

An Infant within years of diſcretion kills another, no Felony; as if he be nine or ten years old.

But if by circumſtance it appeareth he could diſtinguiſh between Good and Evil, it is Felony: as if he hide the body, make excuſes, &c. Crom. 27.

But in ſuch Caſe Execution in prudence reſpited to get a Pardon.

2. What ſaid Malice?

It is either implied or expreſſed.

C.P.C.52. Implied malice is collected either from the manner of doing, or from the perſon ſlain, or from the perſon killing.

1. Malice implied in the manner of doing.

Poiſoning wilfully any man, implied malice.

If a man do an act that muſt apparently introduce harm, and death enſue; as to run among a multitude with a Horſe uſed to ſtrike.

But note, If it were with an intention to do harm, then Murder; if without ſuch intention, Manſlaughter.

The like of throwing a ſtone over a houſe among many people, the intention of doing harm makes it Murder; want of ſuch intention, Manſlaughter, becauſe an unlawful act.

For an intention of evil, though not againſt a particular perſon, makes malice.

Kil-

Killing any perſon without provocation, Murder.

A. comes to *B.* who reſiſts and ſtrikes *A.* kills him, Murder.

A. Diſtorts his mouth, and laughs at *B.* who thereupon kills him, Murder. 42 El. Brames Caſe.

2. Malice implied in reſpect of the perſon killed.

If a Watchman or Conſtable, or any that comes on his aſſiſtance, doing their Office, be killed, it is Murder, though Killer knew him not to be ſuch. 4 R. Hamdens Caſe.

If any Magiſtrate or Miniſter of Juſtice, having a lawful Warrant, be killed, 'tis Murder: As where a Serjeant comes to Arreſt,

1. Though in the Night.
2. Though on Sunday.
3. Though upon Arreſt he ſhew not out of what Court, or whoſe Suit.
4. Though Proceſs Erroneous.
5. Though he ſhew not his Warrant or Mace where 'tis not demanded.

9 R. Mackleys Caſe. But if Officer do what is not warrantable, as break open a window to arreſt, there if ſlain, Manſlaughter.

Malefactors come into a Park, Parker ſhoots, they fly, he purſues, they kill him, Murder in all; for their firſt entry was with malitious intent.

3. Malice implied in reſpect of perſon killing.

A. aſſaults *B.* to rob *B.* who reſiſts, *A.* kills him, Murder.

Priſoner by Dureſs of Goaler comes to an untimely end, Murder.

Executing Martial Law in time of Peace, Murder.

Malice expreſs conſiderable,

1. In the principal in the firſt degree that doth the act.
2. In the principal in the ſecond degree, that is aiding, abetting, &c.
3. In Acceſſaries before Fact.

1. Principal in firſt degree.

If a perſon have no particular malice

malice againſt any particular perſon, but comes with general reſolution againſt all Oppoſers, if act unlawful, and death enſue, it is Murder: As if it be to commit Riot, enter into a Park. Crom. 20.

2. If there be malice between *A.* and *B.* and they meet and fight, although *A.* gives firſt blow, yet if *B.* kill him, Murder.

If there be malice between *A.* and *B.* *A.* aſſaults *B.* and flies to wall, there in his own defence kills *B.* by ſome Murder, but Quære.

If there be a quarrel between *A.* *B.* *A.* challenges *B.* who declines it, but at length upon importunity, and to vindicate his Reputation, meets and fights, and kills *A.* Murder. 14 *Jac. Taverner's* Caſe.

If *A.* and *B.* fall out upon a ſudden, and they agree preſently to fight, and each fetches a Weapon & go into field, and one kills the other, this only Manſlaughter, becauſe the blood never cooled: but otherwiſe if they had appointed to fight next day.

A. and *B.* fall out, *A.* ſaith he will not ſtrike, but will give *B.* a pot of Ale to touch him, *B.* ſtrikes, *A.* kills him, Murder.

If *A.* and *B.* are in malice, *A.* challenges the field, *B.* refuſes to meet, but ſaith he ſhall go to morrow to ſuch a Town, *A.* meets him and aſſaults him, *B.* kills him, Manſlaughter, and no Murder.

The Child of *A.* beats the Child of *B.* who runs home to his Father, and he runs three quarters of a mile, beats the other Child, and he dies, Manſlaughter.

3. If malice be not continuing to death, no Murder.

A. and *B.* combat upon malice, and are parted, and after they meet and combat upon the ſudden, and one kills the other, by ſome not Murder, becauſe the firſt Malice ſatisfied.

If the party killed had wounded at firſt combat the party ſlaying, Quære.

A. and *B.* are at malice, and reconciled, and after upon a new oc-

occaſion fall out and kill, no Murder.

4. Tho malice did not riſe ſo high as death, but intended only to beat the party, yet if malice, it is Murder if death enſue.

A Keeper of *Eſterly* Park finds a Boy ſtealing wood, and binds him to his Horſe tail; Horſe runs away and kills Child, Murder, for it was a deliberate act. *Cr. Car.* 131. *Holloway*'s Caſe.

5. The malice intended to one, *egreditur perſona*, and makes death of another, this act makes it Murder, and qualifies it in ſame manner, as if it had had its due effects.

A. having malice at *B.* ſtrikes at him, and miſſes him, and kills *C.* this is murder in *A.* and if it had been without malice, Manſlaughter. Dy. 128.

A. having malice at *B.* aſſaults him; and kills his Servant, Murder.

A. lays poiſon to kill *B.* and *C.* by miſadventure takes it and dies, Murder in *A.* contrary if it had been

been laid to kill Rats, then *per infortunium.*

A. and *B.* combat upon malice, *C.* comes to part them, *A.* kills *C. per aſcuns*, Murder in both; and if the falling out were ſudden, then only Manſlaughter in him that kills him. Quære.

6. Malice muſt be of Corporal danger to the party.

2. Principal in ſecond degree, that are aiding and abetting.

1. If two or more come together to kill, rob, or beat a man, or to commit a Riot, and one of them kills a man, this is murder in all them of that party that are preſent aiding or abetting him thereunto, or that were ready to aid him, though but lookers on; otherwiſe if they came there by chance. St.P.C.c.40.

2. All are ſaid to be preſent that are in the ſame Houſe, though in another Room, or in the ſame Park, though half a mile diſtant, and out of view; therefore if they come to commit a Felony, ſuch perſons aiding and abetting ſhall be ſaid to be preſent.

3. *A*

3. *A.* and *B.* fall out, and appoint field, *A.* takes *C.* his Second, *B.* takes *D.* his Second, *A.* kills *B.* this is doubtleſs Murder in *C.* and it hath been held Murder in *D.* alſo, for it is a compact; but it ſeems otherwiſe. Crom.19. Dal.c.93.

4. If *A.* and *B.* having malice *præpenſe* meet and fight, and *C.* the Servant of *A.* not acquainted therewith, takes part with *A.* his Maſter, and kills *B.* this is Murder in *A.* and only Manſlaughter in *C.* the ſame Law if *C.* came in ſuddenly and took part with *A.* and kill *B.* Del.c.93. Dy.128. Crom.100.

3. What malice in Acceſſary before Fact.

A. commands *B.* to kill *C.* with a Gun, he kills him with a Sword, *A.* is acceſſary to this Murder, becauſe killing is the ſubſtance.

But if he command *B.* to kill *C.* and he by miſtake kill *D.* this is Murder in *B.* but *A.* is not acceſſary thereunto.

A. commands *B.* to beat *C.* who beats him, whereof he dies, this is Murder in *B.* and *A.* is acceſſary, be-

becauſe death enſued upon the act commanded.

4. What is killing?

Poiſon, Weapon, Gun, Bow, Cruſhing, Bruiſing, Smothering, Strangling, Famiſhing, inciting Dogs, laying a Sick man in the cold.

Laying an Infant in an Orchard under Leaves, and he is ſtricken with a Kite.

St.Dal.c.93. A man keeps a Beaſt uſed to ſtrike knowingly, and ties it not up, the Beaſt kills a man, Felony by ſome, by others not, but a groſs miſdemeanour. 3 *E.* 3. *Cor.* 311.

5. What perſon killed?

It muſt be a perſon *in rerum natura.*

Dal.c.93. If a Woman quick with Child take a potion to kill it, and accordingly it is deſtroyed without being born alive, a great miſpriſion, but no Felony; but if born alive, and after dies of that potion, it is Murder.

Ibid. The like if dies of a ſtroke given by another in like manner, counſel before birth to deſtroy it, and after the

the Child is born deſtroyed accordingly, the counſellor is acceſſary.

6. What a place within the Realm?

Stroke and death *in partibus tranſmarinis* not puniſhable at Common Law, but before Conſtable and Marſhal.

Stroke and death upon Sea inquirable before Admiral, according to Stat. 28 *H.* 8. *c.* 13. But ſtroke upon the Sea, and death upon the Body of the County, not puniſhable at all.

If ſtroke in one County, and death in another, the party ſhall be indicted where death happened.

An acceſſary in County of *A.* to a Felony committed in County of *B.* the acceſſary after Certificate of the Conviction and Attainder of the principal, may be Arreigned in the ſaid County of *A.* where he was acceſſary.

7. The party muſt die within year and day of ſtroke, poiſon, &c.

Manſlaughter.

Manſlaughter.

KILLING another upon a ſudden falling out, or provocation, or unjuſtifiable act, Manſlaughter.

1. What a ſudden falling out?

Two combat and part, and preC.P.C.18. ſently come together and fight, or one preſently fetcheth a Weapon and killeth the other, or they preſently fetch them weapons, and go into the field, and one kills the other, Manſlaughter.

Diverſe Rioters enter into anothers houſe forcibly, and eject the people; afterwards they being in poſſeſſion, the party ejected, with twenty more, comes in the night to the houſe, endeavours to fire it, one within ſhoots and kills one of the aſſailants, and ruled to be Manſlaughter, becauſe their entry and holding with force illegal, and not Mur-

Murder, becauſe ſudden provocation.

So A. claims title to a houſe of B. A. attempts to enter and ſhoots at the houſe, B. ſhoots and kills A. adjudged Manſlaughter.

Two fall out and fight, one breaks his Sword, a ſtranger ſtanding by ſends him another, and he kills therewith, Manſlaughter in both. Dal. c. 94.

2. What a ſudden provocation?

Two ſtrives for the wall, and one kills the other, Manſlaughter.

3. What unlawful act, whereupon death enſuing will make Manſlaughter?

If the unlawful act be deliberate, and tend to the perſonal hurt of any immediately, or by way of neceſſary conſequence, death enſuing, Murder.

But if either ſuch deliberation or intent of perſonal hurt be wanting, Manſlaughter.

Two play at Foils, and one kills the other, Manſlaughter. Sir *John. Chiceſter*'s Caſe.

A man throws a ſtone at another, which

which glanceth and killeth another, Manſlaughter and not Murder, becauſe no malitious intention to hurt; not *per infortunium*, becauſe doing an unlawful act.

There is a parricular Manſlaughter wherein Clergy is ouſt, *per Stat.* 1 *Jac.* 8. wherein,

1. He that is ouſted of Clergy by that Statute, muſt be eſpecially Indicted purſuant to that Statute.

2. It extends to him that actually gave ſtroke, not to thoſe that are preſent.

3. Need not Conclude *contra formam Statuti.*

4. Although the Indictment be ſpecial upon that Statute, yet the Jury may find general Manſlaughter. 23 *Car. B. R.* Page's Caſe.

Lar-

Larceny.

WE come to Offences Capital, which refer to the Goods of any Perſon, *viz.* Larceny, which is of two kinds;

{Simple Larceny,
{Mixt and complexed Larceny.

Simple Larceny of two kinds:

Grand Larceny, of value of 12 pence.

Petit Larceny, under that value.

Simple Larceny, a felonious and fraudulent taking away by any perſon of the meer perſonal goods of another, not from the perſon, nor out of his houſe, to the value of 12 pence.

I. What ſhall be ſaid a Felonious taking, Imports two things:

1. A taking neceſſarily, the Indictment muſt be *Cepit*; if it be Felony, *abduxit Equum* not ſufficient.

If a perſon finds goods loſt, and converts them, though it was *animo furandi*, yet no Felony. C.P.C.108.

If a man hath a bare charge of goods, Felony may be by him committed: As a Butler that hath a Charge of Plate, Shepheard of ſheep; the like of him that hath a bare ſpecial uſe, as the gueſt that hath Plate ſet before him.

But he that hath a poſſeſſion by delivery cannot thereof commit Felony.

A Carrier hath goods delivered to him, and carries them away, no Felony.

A Clothier delivers Yarn to a Weaver to weave, he carries or imbezels it, no Felony.

But this hath two Exceptions.

1. If the privity be determin'd, then it may be Felony.

A. delivers a Pack or Tun of Wine

to

to a Carrier, he opens it, and takes out Goods or Wine, *animo furandi*, Felony.

So if *A.* delivers goods to *B.* to carry to a certain place apppointed, and after takes it *animo furandi*, Felony.

2. By Stat. 21 *H.* 8. *c.* 7. whereby if a Servant goes away with goods of his Maſters delivered to him above value of 40 ſhillings, herein

1. Extends not to Apprentice or Servant within eighteen years.

2. Requires a Delivery.

If one Servant deliver goods to the other, this is a delivery by Maſter.

If the Maſter deliver an Obligation, or deliver Cattel to ſell, and Servant receives money and departs with it, no Felony; like if he had gone away with Obligation.

3. He muſt go away with it.

Waſtfully conſuming thereof, no Felony.

4. Now by Stat. 1 *E.* 6. *c.* 12. he may have his Clergy.
5. He muſt be a Servant at time of delivery, and going away; therefore for imbezelling after Maſter's death, Stat. 3 *H.* 6. *c.* 1. is provided.
6. [illegible] vant receive his Maſter [illegible] nts, and go away with them, not within the Statute.

C.P.C.47. If a man, ſeeing a Horſe in the Paſture of the Owner, having a mind to ſteal him, obtains a Replevin, and thereby hath the Horſe delivered, this a Felonious taking.

If *A.* feloniouſly take my Horſe, and *B.* feloniouſly takes him from Crom.34. him, *B.* may be appealed or indicted as of a felonious taking from me. Stat. 33 *H.* 8. *c.* 1.

II. What a carrying away?

C.P.C.c.47. A Gueſt takes ſheets out of the bed, brings them into Hall with an intent to carry them away, but is apprehended before this, a taking away. *A.*

A. takes horſe of *B.* with an intent to ſteal him, but is apprehended before he can get out of Paſture, this a taking away.

A. kills ſheep, ſtrips them, carries away their skins, Felony; ſo if he pull of the wooll. Crom. 33.

III. By whom, and who ſuch a perſon as may commit Larceny?

An Infant under fourteen years may commit Larceny, but prudence to reſpite Judgment; yet under fourteen burnt in the hand. Preſidents. Dal. 104.

A Feme covert may by her own act commit Larceny, and in ſuch caſe the husband may be Acceſſary to the wife (but not *è converſo*) in receiving her.

But ſhe cannot felonioufly take her husband's goods; and though ſhe take and deliver them to a ſtranger, yet no felony in the ſtranger.

If husband and wife do both a felony, this is a felony in both, and both Dal. 104.

ſhall be arreigned for it, though ſome Opinions to the contrary, which Opinions are now Law.

If wife commits murder by coercion of her husband, murder in both; but if theft, no Felony in her; but a bare Command excuſeth her not.

But if a ſervant commit theft by coercion of his maſter, it is no Felony.

IV. What meer perſonal Goods?

1. If they are in the realty, or annexed thereunto, no Larceny: As Corn or Graſs growing, Apples on Trees, ſtealing a Cheſt of Charters, no Felony, though Cheſt above value.

Taking Lead off a Church no Felony; otherwiſe if he leave it a while and then come and take it.

Taking an Infant Ward no Felony.

2. If they are of a baſe Nature, as Maſtiffs, Dogs, Bears, Foxes, Monkeys, Ferrets, or their Whelps, no Felony of them; but of Hawks

Hawks reclaimed Felony may be.

V. What ſaid the Goods of another?

1. He that hath a ſpecial property, as Bailiff,&c. they are his goods *pro tempore.*

2. He that takes the goods of a Chappel in time of vacation, indictable *pro bonis Capellæ*, ſo *bona Parochianorum, bona mortuorum, bona ignoti, &c.* Dal.103.

So to take the ſhroud off a perſon buried, and it ſhall be *bona executorum.* C.P.C.c.47.

But taking of Treaſure trove, Wrecks, Waifs and Strays before ſeiſure, no Felony.

Taking an Obligation Felony, becauſe in action.

Taking fiſh in a River no Felony, but in a Net, Trunk, or Pond, Felony, becauſe not at their natural liberty: So of old Pidgeons out of the houſe.

Where a man hath property only *ratione loci*, or *privilegii*, in

things *feræ naturæ*, as Coneys, Deer in my Ground, or Park, or Warren, no Felony.

But if reduced to tameneſs, and fit for food, as Deer, Coneys, Cranes, Partridge, Pheaſants, he that ſtealeth them, knowing them tame, committeth Felony.

So of Swans marked or pinioned or Swans unmarked if tame, kept in a Mote, Pond, or private River.

Where a man hath a property *ratione impotentiæ* in things wild by nature, as young Hawks in the neſt, young Pigeons in the neſt, Felony thereof.

Taking of Eggs of Hawks or Swans out of the ground of another, no Felony, but puniſhable by Statute.

But taking any thing *domitæ naturæ*, as Ducks, Hens, Geeſe, Turkeys, Peacocks, or their Eggs; or Domeſtick beaſts, as Horſes, Mares, Colts, &c. or their young, Felony.

VI. When

VI. When this ſhall be ſaid a felonious taking.

If *A.* ſteal goods in the County of *B.* and carry them into the County of *C.* he may be appealed or indicted in the County of *C.* for Larceny, but can be indicted for Robbery only in the County of *B.* Crom. 34.

VII. Of value of twelve pence or above.

Nota, That in a Grand Larceny it muſt be above value of twelve pence, if under it Petty Larceny. Weſt. 1. c. 15.

If two ſteal goods to the value of thirteen pence, grand Larceny in both.

If one perſon at ſeveral times, or at one time ſteal four pence, at another ſix pence, at another three pence, in all amounting to above twelve pence, from the ſame perſon, all theſe put together in one Indictment, amount to grand Larceny. Dal. c. 101. Crom. 30. St. P. C. 24.

If

If a man be indicted for ſtealing goods to the value of ten pence, and the Jurors find ſpecially, as they may, the value but ten pence, 'tis but petty Larceny.

And note petty Larceny is Felony, though not of death, and for this he ſhall forfeit Goods, or be ſubject to ſome Corporal puniſhment.

Robbery.

Robbery.

COmplicate or mixt Larceny which hath another degree of guilt in it.

1. For that it is a taking from the perſon.

2. For that it is a taking out of the houſe.

1. Taking from the perſon.

1. Where the perſon is put in fear, and then 'tis Robbery.

2. When not put in fear, and then 'tis Larceny from the perſon.

Robbery is a felonious and violent taking away from the perſon of another goods or money to any value, putting him in fear.

1. Violent and putting him in fear; the words of the Indictment run, *violenter & felonice*, and that diſtin-

distinguishes him from a Cutpurse.

2. Taking away.

1. An assault to rob without taking away any thing, no Felony.

If a thief, with or without weapon drawn, bid the party deliver his Purse, and he doth it, this is a taking to make it Robbery.

If a thief command to deliver his purse, and he deliver, and then the thief finding little in it, deliver it back, this is Robbery.

If a thief compel the true man by fear to swear to fetch him a sum of money, which he doth accordingly, and thief receives it, Robbery.

If true man's purse be fastned to his girdle, thief cuts girdle, purse falls to the ground, no Robbery; but if thief take up purse, though he let it fall again, Robbery, though he never take it up more.

All that come in company to rob Principals, though one actually do it.

A. B. and *C.* assault *D.* to rob him in the High-way, but rob him not, for

for he eſcaped *A.* rides from the reſt in the ſame High-way, and robs *E.* out of view of the reſt, and for this *B.* and *C.* arreigned and hanged, though aſſented not, becauſe they all came to the end to rob. Crom. 34. Pudſeys Caſe.

3. Taking from the perſon.

If the true man, ſeeking to eſcape, caſt his Purſe into a Buſh, or let fall his Hat, if the thief take it, it is Robbery.

Taking a thing in the preſence, is in law taking it from the perſon.

If one take or drive my Cattel out of my Paſture in my preſence, this is Robbery, if he make an aſſault upon me, or put me in fear: But if he take away any thing from my perſon without putting me in fear by aſſault or violence, no Robbery, and the Indictment runs that he took it from the perſon violently and felonioufly, putting him in fear. Dal. c. 101. Dal. ibid.

4. Of what value ſoever under twelve pence.

Now though Robbery and ſimple Larceny are both Felony, yet they

they differ in theſe Reſpects.

Principal and Acceſſary before are ouſted of Clergy, but not in ſimple Larceny. Stat. 23 *H.* 8. *c.* 1. 1 *E.* 6. 12. 25 *H.* 8. 3. 4 & 5 *Phil.* & *Ma. c.* 4. *Nota*, ſpeaks of Robbery in or near the High-way.

2. The form of the Indictment.

An Indictment of Robbery ſuppoſeth an aſſault, beating and wounding, and taking from the perſon *felonice*, or at leaſt aſſault and putting him in fear *felonice* & *violenter cepit à perſona.* Other Indictments, though of a taking from the perſon, yet not *violenter.*

3. In caſe of other thefts, though from perſon, not felony of death, unleſs exceed twelve pence: But here 'tis Felony of death if never ſo ſmall.

Nota, Taking a mans goods out of his ſhop before his face is Robbery, as if he had taken it from the perſon; and it is nothing to the purpoſe though the thief ſay, I have right to this, or this is mine,

mine, if he have no colour.

Larceny from the perſon, from the Houſe.

Larceny from the perſon without putting in fear, which may be either by picking the pocket, or cutting the Purſe, which is ſuppoſed to be done *clam & ſecrete à perſona.*

In this Caſe 8 *El. c.* 4. if the Indictment purſue the Statute, which is ſecretly without the knowledge of the party, *clam & ſecrete*, he is ouſted of his Clergy.

But if it be under value of twelve pence, then it remains petty Larceny, as before; for the Statute did not alter the Offence, though it took a Priviledge. C.P.C. c. 16.

Larceny from the perſon which is neither *clam & ſecrete à perſona*, nor with putting in terror, nor ſo laid in the Indictment, nor ſo found by the Jury. *Dyer* 224. 17 *Jac. Harman's* Caſe.

Larceny receives another aggravation

vation when it is taken from the perſon of a man.

Per Stat. 23 H.8.c. 1. Robbing any perſon in the dwelling houſe of the owner, his wife, children, and ſervants being within, and put in fear, ouſt of Clergy in caſe of Conviction and Acceſſary before.

Felonious taking of goods to the value of five ſhillings in the day time, out of any dwelling houſe or out-houſe, though no perſon within, ouſt of Clergy *per Stat.* 39 *El. c.* 15.

Theſe have a mark upon them as Larceny complicate, and therefore ouſt of Clergy.

Piracy.

Piracy.

TO this we add Piracy and Depredation on Sea.

This at Common Law conceived petty Treaſon, if done by a Subject: but this alter'd by Stat. 25 *Ed.* 3. ſince that Statute an offence triable by Civil Law till 28 *H.* 8. 15. C.P.C. c. 49.

The Stat. 28 *H.* 8. alters not the offence, but it removes only an offence by Civil Law (and therefore a pardon of all Felonies did not diſcharge it) and gives a trial *per* courſe of Common Law.

1. It extends not to Acceſſary: but if Acceſſary were at Sea, triable *per* Civil Law; if at Land, by no Law: for Stat. 2, 3 *E.* 6. extends not to it.

It extends not to Offences in Creeks or Ports within the Body of

a County, becauſe puniſhable by Common Law.

3. Though it give forfeiture of Life, Lands, and Goods, yet no Corruption of Blood.

4. *Paine fort & dure* in caſes of ſtanding mute.

Note, Clergy *eſt ouſt per ceſt Stat. en Felonies*, and ſo in Manſlaughters.

Quære ſuper Lord Co. *ſi aſcun offence ſuper altum mare ſoit felony.* 3 *Inſ.* 111.

Bur-

Burglary.

WE come to offences againſt the dwelling or habitation; thoſe of two kinds:

1. Burglary.
2. Arſon, or burning of Houſes.

Burglary by the Common Law is, when a perſon in the night time breaketh or entreth into the Manſion Houſe of another, to the intent to commit ſome Felony within the ſame, whether the felonious intent be executed or not.

I. What ſhall be ſaid in the Night?

By ſome after Sun ſet and before Sun riſing it is night. *Dal. c.99.*

But it ſeems ſo long as the Countenance

C.P.C.c.14. tenance of a man may be diſcovered it is day. *Coron.* 293.

II. What Breaking or Entring?

The entring into a houſe with the doors open is a breaking in Law, but here not ſufficient without an actual breaking: Therefore if door be open, or window open; and the Thief draw out the Goods thereby, no Burglary.

But if the Thief break the window, draw the latch, unlock the door, break a hole in the wall, theſe are breaking.

And as there muſt be a breaking, ſo there muſt be an entring.

Setting the foot over the threſhold, putting the hand, or hook, or piſtol within the window, door.

Turning the key where the door is locked on the inſide, an Entry.

In ſome caſes Burglary without actual breaking.

Divers come to commit Burglary, one does it, the reſt watch at the Lanes

Lanes end, Burglary in all.

A Thief goes down a Chimney to rob, Burglary. Dal.c.99.

Thieves having an intent to rob, raiſe Hue and Cry, and bring Conſtable, to whom the owner opens door, and when they come in, they bind Conſtable and rob the owner, Burglary. Ibid.

The Thief aſſaults the houſe, the owner for fear throws out his money, it ſeems not Burglary, but Robbery.

A Thief gets into the houſe on day time by doors open, lies there till night, then robs and goes away, no Burglary. But if he break open the door to go out, Burglary: Ibid.

The Servant opens the window to let in a Thief, who comes in and ſteals, Burglary in the Stranger, but Robbery in the Servant.

If *A.* enter into the Hall by door open, the owner retires into a Chamber, and there *A.* breaks in, this a Breaking and Entring.

If Thieves enter into a houſe through a hole made there before, no Burglary.

A. lies in one part of the Houſe, *B.* his ſervant in another, between them a Stair-foot-door latched, the ſervant in the night draws the latch, and enters his Maſters Chamber to murder him, Burglary.

Trin. 16 Jac. Edmonds c.

III. What a Manſion Houſe within the Law?

The Church a Manſion houſe within the Law. The Outbuildings, as Barn, Stable, are part of the Manſion houſe, and Burglary may be committed in them.

Burglary may be committed in a mans Manſion houſe, though all perſons be out upon occaſion.

So if a man hath two houſes, ſometimes lives in one, ſometimes in another.

A ſhop parcel of a Manſion houſe.

A Chamber in an Inns of Court, where a perſon uſually lodges, a Manſion houſe.

But a Booth is not, therefore remedy ſpecially provided *per Stat.* 5 *E.*6.*c.*9.

But

But an Indictment *quod fregit clauſum ad ipſum interficiendum*, no Felony, for no Manſion houſe.

A. leaſes to *B.* a ſhop, parcel of his Manſion houſe, to work in, where *B.* works in the day, which is broken, ruled not Burglary, becauſe ſevered *per* Leaſe.

IV. With an intent to commit ſome Felony.

If the houſe be broken and entred with an intent to commit a Treſpaſs, as to beat the owner, no Felony.

If with an intent to commit a Rape, by ſome no Burglary, becauſe no Felony at Common Law; but this ſeems otherwiſe, though the Felony be not done.

The Indictment runs, *Burglariter & felonice domum &c. fregerunt vel intraverunt ad ipſum &c. interficiendum*, & *per Stat.* 18 *El. c.* 7. Clergy taken away in all Burglaries.

Memorandum, If a Burglary be committed in *Middlesex*, and the Felon carries the Goods into *Dorsetshire*, if Goods be of value of twelve pence it is Felony, and the benefit of Clergy taken away by 25 *H.* 8. so that they may try him where he is taken, and they usually write upon the Margent of the Indictment, that it is for Burglary in another County.

Arson.

Arſon.

BUrning is a Felony at Common Law by any that ſhall maliciouſly burn the houſe of another.

Burning,

Setting fire to a houſe, without burning it, or any part of it, no Felony; but if part of the houſe be burnt thereby, 'tis Felony by Common Law.

Maliciouſly.

A. intending to burn the houſe of *B.* thereby burns the houſe of *C.* this is Felony; and he may be Indicted, That *ex malitia præcogit'* he burnt the houſe of *C.*

A. maliciouſly burnt his own houſe, to the intent to burn others, but burnt none elſe but his own, ruled no Felony, but a great miſdemeanour;

meanour; upon which ſet in Pillory, and bound perpetually to good behaviour. 9 *Car. B.R. Hains's* Caſe.

The Houſe,

Inſet houſe, or Outſet houſe.

If parcel of Manſion houſe, as Stable, Mill-houſe, Sheep-houſe, Barn, no Clergy: But burning of a Barn, not parcel of a Manſion houſe, if it hath Corn or Hay in it, Felony, otherwiſe not.

But Felony not ouſt of Clergy, unleſs part of a Manſion houſe or Barn with Corn.

Burning the frame of an houſe by 37 *H.* 8. attempting to burn a ſtack of Corn by 3 & 4 *E.* 6. made Felony, both Repealed 1 *Ma.*

But in *Northumberland*, *Cumberland*, *Weſtmoreland*, and *Durham*, Felony to burn a ſtack of Corn by 43 *El. c.* 3.

Nota, The Indictment of Burglary *Domum Manſionalem*; of Arſon only *Domum.*

Eſcapes.

Eſcapes.

NOW we come to thoſe Felonies that are the hindrance of bringing a Felon to publick Juſtice; they are of three kinds in reference to perſons that cauſe it.

1. In the party himſelf.
   - Breach of Priſon.
   - Eſcape.

2. In the Officer that permits it, Voluntary, Involuntary.

3. In a Stranger, that is Reſcue.

1. Breach of Priſon.

At Common Law it ſeems all breach of Priſon Felony; but by Stat. 1 *E.* 2. *nullus de cætero, qui priſonam fregerit, ſubeat Judicium vitæ vel membrorum pro fractione priſonæ, niſi cauſa, pro qua capt' & impriſonat' fuit, tale Judicium requirit.* And

And herein theſe things are inquirable:

1. Who may Arreſt or Impriſon?

2. What a Priſon?

3. What breaking a Priſon?

4. What cauſe that requires a Judgment to make this Felony?

1. Who may Arreſt or Impriſon?

1. Why a private perſon?

2. Why a publick Officer?

1. Arreſts by a private perſon, and that of two kinds:

1. Either commanded or enjoyned by Law.

2. Or permitted or allowed by Law.

C.P.C.55. Arreſts commanded by Law.

1. Perſons preſent at the committing of a Felony muſt uſe their endeavours to apprehend the Offender, otherwiſe they are to be fined and impriſoned.

St.P.C.29. Hence it is that if a Murder be committed in the day in a Town not incloſed, the Town ſhall be amerced; and if in a walled Town, be it

it night or day, the Town ſhall be amerced if Offender eſcape. Stat. 3 *H.* 7. 1.

So it ſeems if one ſtrike another dangerouſly, though death hath not yet hapned.

Upon Hue and Cry well levied, every man may and muſt arreſt the Offender upon whom it is levied, by Stat. *Wincheſter*: and want of purſuit thereof is puniſhable by Fine and Impriſonment. C.P.C. 52.

The manner of levying Hue and Cry where a Felony is committed, or a dangerous ſtroke given, is this:

Reſort to the Conſtable, declare the Fact, deſcribe the Party and the way he is gone, who thereupon is to raiſe the Town, be it by night or by day, and to give the next Conſtable warning, and he the reſt.

I aid an Officer that has a lawful warrant *in fait*, or in Law, to arreſt a Malefactor. Dal. 249.

And in theſe caſes it ſeems it is in the power of ſuch private perſon to break the houſe, if upon demand he

he cannot be admitted to take the Offender. 4 *Inſ.* 177.

Videtur ſur felony fait & juſt ſuſpicion aſcun puit arreſter.

3. *N'eſt puniſhable licet Conſtable ſuffer luy d'eſcape.*

A permiſſive Arreſt *per* private perſon.

If a Felony in fact be committed, and a private perſon ſuſpect another upon probable cauſe, he may be arreſted, though in truth innocent: And theſe probable cauſes,

Hue and Cry levied, Company with the Offender, Goods in his Cuſtody, Living vagrantly, Common Fame.

But upon ſuch ſuſpicion he cannot break open the door of a houſe, but may enter the door being open.

4 Inſ. 179. The perſon arreſted by either of theſe means muſt be brought to the Conſtable, and if Conſtable be not to be found to a Juſtice, and in caſe of a Felon known, put into Stocks or Common Goal till he be brought to a Conſtable.

Arreſt

Arreſt *per* a publick Officer without Proceſs of Law.

Nota, Whatſoever a private perſon may do in this caſe, an Officer as a private perſon may do.

Now theſe Officers,

1. Conſtable.

If complaint be made to a Conſtable of Felony committed, or of a dangerous blow given, though the party not dead, in caſe there be an aſſault upon the Conſtable, or in caſe there be any other breach of the Peace, the Conſtable may impriſon the party in the Stocks, in the Goal, or in his Houſe, till he can bring him before a Juſtice of Peace.

But if it be a bare breach of the Peace, unleſs it be in his view, he cannot arreſt the party, but complaint muſt be made to a Juſtice of Peace, for the Conſtable is but Conſervator, not Juſtice of Peace, unleſs a Felony be done.

If the Conſtable ſee an Affray, and the Malefactor fly into another County before arreſt, he may purſue

ſue him and arreſt him there, and muſt bring him before Juſtice of the County where arreſted.

But if the Eſcape was after arreſt, then he may retake him in another County, and bring him to the firſt County.

He may break a door open to take an Offender, where Felony committed, or dangerous wound given.

2. A Juſtice of Peace upon complaint may iſſue out his Warrant to arreſt the party.

1. A general Warrant to ſearch for Felony or ſtoln Goods, not good.

2. If a Juſtice hath cauſe of ſuſpicion, he may arreſt a common perſon not as a Juſtice.

3. Upon complaint of a Felony committed, and when doubt may be of apprehending the Offender in aſſiſtance of the party ſuſpecting, he may grant his Warrant to the Conſtable to apprehend the party, but the party ſuſpecting ought to be preſent, becauſe 'tis his arreſt.

But

But by vertue of ſuch Warrant doors cannot be broke open.

4. But at Seſſions the Juſtices may award a *Capias* againſt the perſon indicted, and by vertue thereof the Sheriff may break open a door.

A party being apprehended by ſuch Warrant, is either to be Committed, Bailed, or Diſcharged.

The Commitment by a Juſtice ought to be to Common Goal by Stat. 13 *H.* 6. 12. and the Mittimus ought to be,

1. Under Seal.
2. To contain the Cauſe.
3. To have an apt Concluſion, *viz.* and there to ſtay till delivered by Law, otherwiſe Warrant void.

And note, That a perſon committed for Treaſon, Felony, or otherwiſe, cannot be diſcharged till indicted and acquitted, or *Ignoramus* found, or diſcharged by

Proclamation by Kings Bench upon *Habeas Corpus.*

In order to the conſideration of Arreſts and Eſcapes, here fit to conſider of Bail and Mainpriſe in caſes of Felony.

1. What Bail is?
2. In what caſes?
3. By whom?

Bail.

Bail.

1. BAIL are Sureties taken by a perſon authorized, to appear at a day, and to anſwer and be juſtified by Law.

The difference between Bail and Mainpriſe is, That

Mainpriſe are only Surety, but Bail is a Cuſtody; and therefore the Bail may reſeize the Priſoner if they doubt he will fly; or detain him and bring him before a Juſtice, and the Juſtice ought to commit the Priſoner in diſcharge of the Bail, or put him to find new Sureties: The like may be done by the Juſtices in caſe of inſufficient Bail.

If a Juſtice of Peace take inſufficient Bail, and the party appear not, the Juſtice finable by Juſtices of Goal Delivery.

The ſufficiency of Bail in reſpect

of number two at leaſt, and thoſe Subſidy men in caſe of Felony.

And in reſpect of the ſum, forty pounds at leaſt.

Bail is either a certain ſum, or *corpus pro corpore*, in which caſe the Offender not appearing, the Surety ſhall not be Executed, but Fined. 29 *Aſſiſ.* 44.

2. In what Caſes?

1. Generally; To refuſe Bail where the party ought to be bailed, the party refuſing the ſame is finable as a Miſdemeanour; and admitting Bail when it ought not puniſhable by Juſtices of Goal Delivery, or puniſhed as a negligent Eſcape at Common Law, *de quo infra.*

2. Particularly; At Common Law Bail in all Caſes but Homicide; But now the Stat. *Weſtm.* 1. *c.* 15. directs what Caſes bailable, what not?

At this day in all Offences below Felony, the party accuſed is bailable, unleſs

1. Ouſted by that Statute, or ſome other Statute.

2. Judg-

2. After Judgment be given.

If a perſon be brought before a Juſtice, if it appears no Felony committed, he may diſcharge him; but if Felony be committed, though it appears not that the party accuſed is guilty, yet he cannot diſcharge him, but muſt commit or bail him.

The caſes wherein parties not bailable, are

1. In reſpect of the hainouſneſs of the Offence.

1. In Charge of Treaſon againſt the King's Perſon, counterfeiting the Seal, Falſifying Money.

2. Arſon, or burning Houſes. Dal. c. 114. v. rep. ſup.

3. In a Charge of Homicide.

1. In caſe of a Charge of Murder Juſtices of Peace cannot bail, but King's Bench may, and do it at diſcretion, for the Stat. *Weſt.* 1. extends not to that Court.

2. In caſe of Manſlaughter, tho' it be *ſe defendendo*, and appear ſo to Juſtice of Peace, they cannot bail the party accuſed.

If he confeſs the Fact upon examination, if taken with the manner, if apparently known or manifeſted that he killed another.

But if it be a *non liquet*, and the Charge but Manſlaughter, there it ſeems they may bail.

Or if he had given a dangerous ſtroke, till party dead he may be bailed.

But ſuch bailment where Manſlaughter or other Felony is committed, muſt be

1. By two Juſtices of the *Quorum*.

3 H. 7. c. 9. 2. After Examination.

St. 1 & 2 Ph. & Ma. c. 13. And theſe be all the perſons excluded from bail ſimply, in reſpect of the nature of the offence.

1. All Acceſſaries before or after any Offence bailable; but if Principal be attainted, and Acceſſary indicted, he ſhall not be bailed until he hath pleaded to the Indictment.

2. Perſons indicted of Larceny before Sheriff, if of good name.

3. Im-

3. Impriſonment for a light ſuſpicion, if of good name.

4. Indicted or accuſed of petty Larceny only.

5. Appeal of Approver after death of Approver.

6. Accuſed for Treſpaſs, for which a man ought not to loſe life or member; and if bail not taken away by a ſubſequent Stat. hence alſo a party indicted for Burglary or Robbery may be bailed.

2. As bail is ouſted in ſome caſes, in reſpect of the greatneſs and conſequence of the Offence charged, ſo it is in reſpect of the notoriety of the Offence

For bail is, when *indifferenter*, whether guilty or no.

But when that indifferency is removed, the Offender otherwiſe bailable is become not bailable.

1. If a Perſon be Attaint by Outlary of any Felony, yet if Defendant comes in and pleads in avoidance of the Outlary, be it in Appeal or Indictment, the King's Bench may bail him.

2. If he be convict by Verdict or Confeſſion of any Felony, not bailable.

But if a man be convict of Manſlaughter *ſe defendendo*, the Juſtices of B. R. or Goal Delivery, or ſpecial Writ may bail him, but not Juſtices of Peace: So if he have a Charter of Pardon.

3. He that becomes an Approver cannot be bailed.

4. He that Abjures cannot be bailed.

5. He that's taken with the manner not bailable, and conſequently he that's taken freſhly upon Hue and Cry, *Bridges*'s Caſe. Juſtice of Peace fined 40 *l.* for bailing ſuch.

6. He that breaks Priſon not bailable.

7. Open and notorious thievery not bailable.

But he that is taken for a light ſuſpicion bailable.

But if Preſumption ſtrong, or Defamation great, he may refuſe to bail him: This lies in diſcretion.

8. Thoſe

8. Thoſe that are appealed by Approvers, unleſs

1. Approver die.
2. Approver wave his Appeal.
3. Unleſs he be of good name.

And the reaſon hereof, becauſe when the Appealer accuſes another, he confeſſes himſelf Guilty, and therefore induceth a preſumption of guilt in another.

But this concerns not Juſtices of Peace, becauſe no man can become Approver before them, becauſe they cannot aſſign a Coroner; but they may take a Confeſſion by way of Evidence.

But a bare Indictment or Appeal did not induce ſuch preſumption that may hinder the bailing of a Perſon otherwiſe bailable. *Weſtm.* 1. *c.* 25.

But in Appeals of Death the Court in diſcretion admit not Defendant to bail but upon weighty cauſe.

If the party be acquitted within the

the year upon Indictment, he is not to be discharged, but remanded or bailed at discretion, that an Appeal may be prosecuted against him.

3 H.7.c.1. 3. Who may take bail, or bail Offenders?

Bail was taken either *virtute brevis*, or *ex officio*.

1. Bail taken *virtute brevis*, that was either General or Special.

General Writs.

Homine replegiando.

Habeas Corpus.

Writ of Mainprise; this was directed to Sheriff, commanding him to deliver by the Mainprize of it the party indicted before him.

But now by Stat. 28 *E.* 3. *c.* 9. St. P.C. 77. these Inquests before Sheriff are taken away, and consequently the Writ of Mainprize.

Special Writ, as where party is convict of Manslaughter *se defendendo*, Special Writ to certifie.

2. Bail *ex officio*.

1. The

1. The King's Bench, who have a higher Power than any other Power.

1. They may either in caſe of an Original Suit, by Indictment or Appeal before them; or upon an Indictment or Commitment returned to them, by *Habeas Corpus* or *Certiorari*, bail where another Court cannot.

In caſes prohibited by Stat. *Weſt.* 1. *c.* 15. *v.* 2. *Inſt. parol viſcount & autres, & parol ne ſoient repleviſable.*

2. Juſtices of Goal Delivery, who may bail in caſes where Juſtices of Peace cannot, if it be a thing within their cognizance: As a man convict of Manſlaughter *ſe defendendo*, or a perſon convict of Manſlaughter that hath a Pardon to plead.

1. Juſtices of Peace they cannot bail in any caſe, but where they have cognizance of the cauſe; therefore if taken with Proceſs of Rebellion out of *Chancery* they cannot bail.

2. The Statutes that give power to Juſtices of Peace to bail in caſe of Felony,

Felony, are 3 *H.*7.*c.*3. 1 & 2 *Ph.* & *Ma. c.* 13. upon which two kinds of bailment.

1. Upon the firſt Accuſation, and that doubtleſs muſt be done.

1. By two Juſtices of Peace, whereof one of *Quorum.*

2. After Examination taken concerning the Offence.

Cr.150. 2. After commitment: And though ſome Opinions be that he may be bailed by one Juſtice, yet it ſeems otherwiſe; for the Stat. of 1 *R.* 1. 3. that gave power to one, ſtands repealed by 3 *H.* 7.

3. After Indictment and Proceſs thereupon iſſued in caſe of Treſpaſs or Miſdemeanour, or Penal Statute, not prohibiting bail, he may be bailed by two Juſtices, whereof one of the *Quorum*; and by ſome by one Juſtice, but this holds not in caſe of Felony.

4. The Sheriffs, Baily, or Officers of Indictment before them.

But theſe are removed from that power; as it ſeems by the Stat. 28 *E.* 3. *c.*9. 1 *E.* 3. *c.*3. whereby they are

are not to make Proceſs, but to remove them to the Seſſions of the Peace.

Having conſidered the perſon that may arreſt and bail, it makes way to conſider the Offences againſt ſuch Arreſt or Impriſonment, by breaking ſuch Priſon, &c. And herein enſues the ſecond Conſideration.

2. What Priſon within this Act?
   1. Stocks.
   2. Priſon of the Lord of Franchiſes.
   3. The Cuſtody of any that lawfully arreſts, or the houſe of the Conſtable, or other Priſon where detained.
   4. The Church, where a perſon abjuring is.
   5. The Priſon of the Ordinary, which is ouſted by 23 *H.* 8. *c.* 11.

What

What a breaking?

If Priſon be fired without privity of Priſoner, he may lawfully break it to ſave himſelf.

2. If Goaler do voluntarily permit him to eſcape, Felony in the Goaler, not in the Priſoner; but if negligent, Felony in the Priſoner, and Miſdemeanour in the Goaler.

3. If Priſoner under Cuſtody be reſcued, or Priſon broke by ſtrangers without procurement of the Priſoner, no Felony in Priſoner.

4. Going out doors open, no Felony; for that requires an actual breaking.

4. *Niſi con' tale judicium.*

1. If *A.* mortally wound *B.* and is committed, and he break Priſon, and *B.* then die, no Felony.

2. If a Felony made by ſubſequent Statutes, and an Offender therefore break Priſon, Felony.

3. Committed for ſuſpicion of Felony,

lony, yet if Felony done, breaking Priſon Felony.

4. If the Offence for which the party was committed appear not by matter of Record, neceſſary a Felony be done, elſe breach of Priſon no Felony.

But if it appears by matter of Record, and the party taken by *Capias*, if he break Priſon, Felony, though no Felony done.

5. If Felony was done, yet breach of Priſon no Felony, unleſs committed by lawful *Mittimus*, *de quo ſupra.*

6. The Indictment for the breach muſt be Special, that it may appear he was committed for Felony.

5. *Tale Judicium requirit.*

1. Breach of Priſon turns into Felony only, though party committed for Treaſon.

If a Priſoner break Priſon wherein Traitors are, to let out Traitors, this is Treaſon.

2. If

2. If a Priſoner break Priſon he may be Arreigned of that before he be convict of firſt Felony.

But a Goaler permitting a voluntary Eſcape ſhall not be Arreigned till Priſoner firſt attaint; for if Priſoner acquit, Eſcape diſpuniſhable.

Nota, If a perſon eſcapes before arreſt, not puniſhable in him as Felony, but forfeits Goods when flight proved.

In caſe a man ſlain in the day, Offender Eſcape, Townſhip amerced.

Eſcape in the Officer, or him that makes the Arreſt.

This either in caſe of Arreſt,

1. By a Stranger.
2. By an Officer.

If a ſtranger arreſt a man for Felony, or ſuſpicion thereof, and deliver him over to four others, they receive him and let him go at large, this an Eſcape in both; for the firſt man ſhould have delivered him to the

the Conſtable, and the latter ſhould not have let him go at large.

And the ſame Law ſeems to be for a ſtranger that hath a Priſoner in his Cuſtody, as for an Officer in caſe of Eſcape voluntary or negligent.

Eſcape by the Officer.

1. Negligent.
   1. Bailing a perſon not bailable, though ignorant, by one that hath power to bail, a negligent Eſcape.

   But it ſeems if done by a Goaler a voluntary Eſcape, becauſe he hath no ſuch power.
   2. The ordinary puniſhment of ſuch negligent Eſcape.
      1. Of the party attaint 100 *l.*
      2. Of the party indict 5 *l.*
      3. Of a party not indicted at diſcretion.
   3. For inſufficiency of Goaler, Sheriff muſt anſwer for negligent Eſcapes.
   4. A Goaler *de facto*, though not *de jure*, muſt anſwer for Eſcapes.

5. If after a negligent Eſcape the Goaler return him upon freſh Suit before he be puniſhed, it excuſed.

2. Voluntary Eſcape.

St.14 E.3.c.10 Hath the ſame Crime that the perſon permitted to Eſcape ſtood committed for, *viz.* Treaſon or Felony.

But this is in the immediate perſon that permits it; and therefore though Sheriff muſt anſwer for offences of Goaler civilly, yet he ſhall not criminally.

3. There muſt be a Felony really done, and a Commitment by a lawful Warrant.

Dal.336. Dy.99. 4. If within year Priſoner be acquitted upon Indictment, yet a voluntary Eſcape is puniſhableas Felony, becauſe wife to her Appeal.

5. The Eſcape voluntary puniſhable *ut ſupra*, though Priſoner not indicted.

1. An hindrance of a perſon to be arreſted that has committed Felony is Miſdemeanour, but no Felony.

2.But

2. But if party be arreſted, and then reſcued, if arreſt was for Felony, Reſcuer Felon; if for Treaſon, Traitor; becauſe they are all Principals.

But he ſhall not be arreigned until Principal be attainted; and if Principal die before attainder, Reſcuer ſhall be fined and impriſoned.

3. There muſt be a Felony really done, and a lawful Commitment.

Felonies by the Statute.

C.P.C.c.14. 3 H.7.c.13. IMagining or conſpiring to kill the King, or any of his Council, by any of the Kings Servants, Clergy not taken away.

1 *Jac. c.* 12. *Witchcraft, de quo ſupra. St.*25 *H.*8. *c.* 6. revived by 5 *El.c.*17.

Buggery with man or beaſt, without benefit of Clergy.

There ought to be *Penetratio* as well as *Emiſſio* in this.

A Rape.

13 E.1. c.34. This was Felony at Common Law, then by Stat. *Weſtm.* 1. *c.* 13. made but Miſdemeanour; then by this Statute reſtored to Felony again.

And hence it is that it is not inquirable in Leet, becauſe though Felony, yet it loſt its nature by *W.* 1. *c.* 13.

If a woman be under 10 years, then

then though ſhe conſent, yet by Stat. 18 *El. c.* 7. it is a Rape; if above 10 years, if ſhe conſent not, a Rape, though ſhe conſent after.

But in ſuch caſe of a ſubſequent conſent, the Stat. 6 *R.* 2. *c.* 6. gives the Appeal to the Husband, if not to Father, &c.

Clergy taken away by Stat. 18 *El. c.* 7. upon Conviction by verdict, or Confeſſion, or Outlawed.

Taking a woman againſt her will and marrying her, Felony. 3 H. 7. c. 2.

1. Such Maid, Widow, or Wife muſt have Lands, Tenements or Goods, or be Heir Apparent.

2. She muſt be taken againſt her will.

3. Extends not to taking a Ward or Bondwoman.

Nota, The taking away in one County, and marrying in another, Indicted where married; and they muſt Enquire of forcible taking away.

2. Privy to the marriage, but not to the force, not Guilty.

3. Marrying with consent not excusing so long as she is under the force, 13 *Car. Fulwood's* Case.

All Accessaries before and after made Principals by this Act.

Clergy taken away by Stat. 39 *El. c.* 9.

5 H.4.c.5. Malicious cutting Tongues or putting out Eyes, Felony.

Vide 22 & 23 Car.2. cap.1. Clergy taken away. Clergy not taken away.

Extends not to cutting off Ears.

8 H.6.c.12. Stealing, carrying away of Records, Felony. And

The Judges of either Bench enabled to determine the same.

Accessaries before made Principals.

5 H.4.c.4. Multiplication of Gold or Silver, Felony.

1 H.7.c.7. Hunting unlawfully in Forests, Chases, or Warrens with painted faces by night, and rescue, *viz.* by other their party arrested, Felony.

31 El.c.4. Imbezelling the King's Armour, &c. Felony.

Qua-

Qualifications.

1. Ought to be impeached within a year.

2. Offender loſeth Lands but during life.

3. No Corruption of blood.

4. Wife loſeth not Dower.

Subjects paſſing Sea to ſerve foreign Prince, not having taken Oath of Allegiance. 3 Jac. c. 4.

No Corruption of blood: Offender may have Clergy.

Articuli ſuper Cartas c. 2.

Purveyors Felony in certain caſes, they may have Clergy.

Wandring Souldiers Felony in certain caſes; excluded of Clergy. 39 El. c. 17.

Souldiers retained, as is preſcribed in the Act, departing from their Captains without licenſe, 2 *E.* 6. *c.* 2. 18 H. 6. c. 19.

idem Clergy excluded.

Marrying a ſecond husband or wife, the former living, except 1 Jac. 11.

1. The man under fourteen, or the wife under twelve at time of

firſt marriage, and not agreeing after firſt Eſpouſals, may marry a ſecond husband or wife.

2. A man or wife abſent above ſeven years ſecond, marriage no Felony: If beyond Sea, then notice of life; if in *England*, then without notice.

1 Jac. 11.

3. After a Divorce, though *à menſa & thoro* only.

4. After anullity declared of ſecond marriage by Spiritual Court, Offenders have Clergy.

1 *Jac. c.* 31. for going with a Plague ſore, but this diſcontinued.

14 E. 3. 10. Goaler compelling Priſoner, through Dureſs, to become Appellor, Felony, whether Appellant be acquitted or not.

3 H. 5. c. 1. obſolete. Coining, or bringing in and uttering Scotch money; and 2 *H.* 6. *c.* 9. payment of blanks, Offender hath Clergy.

17 E. 3. St. 16. incerti temporis. Tranſportation of Silver, or Importation of falſe money made Felony, Offender hath Clergy.

Ex-

Exportation of Wooll or Woolfells, other than to the Staple at *Calais.* 18 H.6.c.15.

Stealing Falcons, or concealing the ſame after Proclamation, Felony, 37 E.3. 19.

Offender hath Clergy.

Congregations of Maſons to prevent Statutes of Labourers; but this Obſolete becauſe of the Statute 5 *El.* the Acts to which it relates are repealed. 3 H.6.c.1.

Receiving, retaining, or maintaining a Jeſuit or Popiſh Prieſt knowingly, 27 El.c.2.

Clergy excluded.

Egyptians above fourteen years remaining here a moneth, and 5 *El.* *c.* 20. takes away Clergy. 1 & 2 Ph.& M. c.4.

Felony refuſing to make Abjuration, and after Abjuration not to depart, in ſome caſe 35 El.c.2.

Clergy excluded.

Dangerous Rogues adjudged to the Gallies, and returning without licenſe, Felony, but Offender hath Clergy: but branded Rogue Felony, and no Clergy. 39 El.c.4. 1 Jac.c.7.

Forging

5 El.c.14. Forging a Deed after former Conviction.

If a man be convict or condemned of publishing a forged Deed, and after he forge a Deed, this is Felony.

C.P.C. p.172. If the offence were after a former, but before conviction thereof, no Felony,

Clergy ousted.

8 El.c.3. Sending sheep beyond Sea after former conviction,

Clergy allowed.

33 H.6. c.1. Servants, after decease of Master, riotously spoiling Goods, &c.

Offender shall have Clergy.

21 H. 8.7. Servants imbezelling Goods of Master, delivered to them, Felony; but the Statute that took away Clergy being Repealed by 1 *E.* 6. *c.* 12. they may now have Clergy.

22 H.8. c.11. Cutting Powdike, Felony,

2 & 3 Ph. & Ma.c.19. Offender hath Clergy.

43 El. c.13. Detaining persons in *Cumberland* against their will, and giving or receiving blackmail, &c.

Felony without Clergy.

Mis-

Miſpriſion of Treaſon.

NOW we come to Offences Criminal, but not Capital; and thoſe of two kinds:

1. Offences by Common Law.
2. Offences againſt Statutes.

Offences againſt Common Law not Capital, are either greater Offences or leſſer.

Greater; and thoſe come under name of Miſpriſion; and thoſe again of two ſorts:

Negative, in not doing that they ought, or of Omiſſion.

Poſitive, in doing ſome great Miſdemeanour they ought not.

The Negative Miſpriſion.

1. Miſpriſion of Treaſon.

All Treaſon includes Miſpriſion and

and Concealing of any Treaſon, is declared Miſpriſion only by Statute 1 & 2 *P. & M. c.* 10.

C.P.C. c.3. But this in caſe of bare knowledge and aſſent it is Treaſon, and though Treaſon by Statute, yet the concealing thereof is Miſpriſion of Treaſon.

Every man therefore that knoweth Treaſon, muſt with all ſpeed reveal it to King, his Privy Council, or Magiſtrate.

He that receives and comforts a Traitor knowingly, be it a counterfeiter of Coin or other, is a Principal Traitor, and not only guilty of Miſpriſion. *Abingdon*'s Caſe againſt Opinion in *Dyer* 296. *Conier*'s Caſe.

The Judgment in caſe of Miſpriſion of Treaſon is Impriſonment during life, forfeiture of Goods, forfeiture of profits of Land during life.

2. Miſ-

2. Miſpriſion of Felony is either by Common Law or by Statute.

By the Common Law a concealment of Felony, or procurement of the concealing thereof.

The Puniſhment.

1. A common Perſon Fine and Impriſonment.
2. An Officer, as Sheriff, Coroner, Impriſonment for a year, and Ranſom at King's pleaſure by Stat. *W.* 1. *c.* 9.

By the Stat. 3 *H.*7. *c.*1. 33 *H.*8. *c.*6. one knowing of an unlawful Aſſembly, and not diſcovering it within 24 hours.

Concealment of Jurors, *v. Stat.* 5 Ed. 3. c. 10.

3. Theft-boot, which is more than a bare Miſpriſion of Felony, and is where the Owner doth not only know the Felony,

ny, but takes his Goods again, or other Amends, not to Proſecute.

But taking the Goods barely no offence, unleſs he favour the Thief.

The puniſhment hereof is Ranſom and Impriſonment.

Miſpriſion Poſitive, or of Commiſſion.

1. Diſcovery by one of the grand Inqueſt of the perſon Indicted, or by Evidence againſt them, Miſpriſion, puniſhable by Fine and Impriſonment, but no Felony.

2. A perſon diſſwading Witneſſes from bringing in Evidence againſt a perſon is no Acceſſary, but a great Miſpriſion, puniſhable by Fine and Impriſonment.

3. Reſcuing a Priſoner from Barr of *B. R. Canc. B. C.* or *Exchequer*, a Miſpriſion for which a party ſhall loſe his Hand, Goods, Profits of Lands, during Life perpetual Impriſonment.

4. If

4. If a man ſtrike ſitting the Courts at *Weſtminſter*, in preſence of Courts, like Judgment.

5. If in preſence of thoſe Courts, or before Juſtices of Aſſize or *Oyer & Terminer*, a perſon draws his Sword upon any Judge or Juſtice, though he ſtrikes not, or ſtrike another, like Judgment.

6. *Per Stat.* 33 *H.* 8. *c.* 12. ſtriking in the King's preſence, drawing blood, loſs of hand, perpetual Impriſonment, Fine and Ranſom.

7. *By St.* 14 *El. c.* 3. forging of Money not current Miſpriſion of Treaſon.

8. Stranger uttering falſe Money made within this Realm, known to be Counterfeit, 3 *H.* 7. 10.

9. A Lord of Parliament departing from Parliament, 3 *E.* 3.

And hither we may refer Maihem, which though it be a particular Crime for which Appeal lieth, yet it is not Felony of death.

Cutting off the hand, or ſtriking out a tooth, Maihem, but not cutting off the ear. C.P.C. c. 40.

The

The Judgment is only Fine, Dammages; and therefore if recovery in Treſpaſs, it is a good barr in Appeal of Mayhem.

Offences of an Inferiour nature are either ſuch as are committed by an Officers neglect of duty, as Bribery, Extorſion.
Or ſuch as refer to a common perſon, without relation to Officers, and thoſe reducible to three kinds.

1. Breaches of publick Peace, and therein
   1. Of Affrays.
   2. Of Riots.
   3. Of Forcible Entries.
   4. Barretries.
   5. Riding armed.
2. Deceipts and Cozenage.
3. Nuſances.

Decay of Bridges.
Decay of High-ways.
Inns and Alehouſes.

Breach

Breach of the Peace.

AFFRAY,
If weapon drawn, or ſtroke given or offered; but words no Affray: menace to kill or beat, no Affray; but yet for ſafeguard of Peace, Conſtable may bring them before Juſtice.

In Affrays conſiderable,

1. What a private man may do?

Private perſons may ſtay Affrayers till heat over, and deliver them to Conſtable.

If a perſon hurt another dangerouſly, private perſon may arreſt the Offender, and bring him to Goal or next Juſtice. Dal.c.8.

2. What by a Conſtable.

1. Affray in preſence of a Conſtable, he ought to do his

endeavour to ſuppreſs it, otherwiſe finable.

2. If an Affrayer fly to a houſe, or if made in a houſe, Conſtable may break open houſe to preſerve peace, or take the Offender.

3. If in Affray aſſault be made upon Conſtable, he may ſtrike again, or impriſon Offender.

4. Conſtable may in ſuch caſes impriſon till he find ſurety of Peace.

5. It ſeems if Affray paſs, and not in view of Conſtable, he cannot impriſon without warrant of Juſtice unleſs Felony done, or like to be done.

3. What by a Juſtice?

1. In his preſence, the ſame power that a private perſon or Conſtable, and may impriſon till ſurety of Peace found; the like upon Complaint.

2. If

2. If dangerous hurt, Juſtice may impriſon till it appear whether the party die or live, or bail the party.

The former the better diſcretion.

Riot.

When above the number of two meet to do ſome unlawful act, and do act it; but if they meet and act it not, an unlawful Aſſembly, in power of Juſtices to ſuppreſs them, 13 *H.* 4. *c.* 7.

A man for ſafeguard of his houſe againſt Malefactors or Treſpaſſers, may aſſemble his Friends for his Defence.

But he cannot aſſemble to prevent a beating threatned in his preſence, Riot recorded by one Juſtice traverſable.

Forcible Entry.

Forcible Entry muſt be either manifeſt, furniſhed with unuſual weapons, menace of life or limb, breaking open doors; contrary it ſeems of doors only hatched, Ejecting forcibly the Poſſeſſor.

Cum multitudine gentium, one may commit a Force, three at leaſt a Riot.

Forcible Detainer.

Menacing Poſſeſſor to go out upon pain of loſs of life or member.

Unuſual Weapons or Company, refuſing to admit the Juſtice to come in to view the Force.

Detainer with Force juſtifiable where party in poſſeſſion three years; but though his Poſſeſſion be lawful, yet within three years actually removed, though reſtored by Juſtices, enables not a Detainer with Force.

But

But if three years Poſſeſſion hath been by Force, then the laſt forcible Detainer puniſhable, and hinders not Reſtitution.

If Diſſeiſee within three years make lawful Claim, this an Interruption of his Poſſeſſion.

Reſtitution.

1. Juſtices *B. R.* may reſtore upon Indictment before them.

2. One Juſtice of Peace cannot reſtore upon an Indictment before him, nor Seſſions of Peace, unleſs upon an Indictment found at Seſſions.

3. It ſeems Juſtice of Oyer and Terminer, or Goal Delivery, cannot Reſtore.

2. How?

Upon view.

Upon Indictment muſt be ſufficient, *adhuc extra tenet.*

If Erroneous, may be ſuperſeed by ſame Juſtice before Executed.

After it is Executed, then Reſtitution in *B. R.* upon Indictment quaſhed.

Reſtitution ſtayed
By Certiorari.
By quaſhing Indictment.
By pleading thereunto, which is nevertheleſs Indiſcretion.

Barretry.
Riding Armed.
Going Armed.
V. St. 2 *R.* 2. *c.* 1. 7 *R.* 2. *c.* 13. 2 *E.* 2. *c.* 3. *Stat. Northampton.*

Nu-

Nuſances.

BRidges Publick
Are not chargeable upon a particular perſon, but *ratione tenu'*.

But Common Right repairable by whole Country.

The manner of Repairing directed by Stat. 2 *H.* 8. *c.* 3.

Highways.

HIghways Proviſions.

1. For their enlarging and removing Trees within 200 foot of either ſide.

5 *El. c.* 13.
29 *El. c.* 5.
2 & 3 *Ph. & Ma. c.*8.

The charge of repairing Highways lies on common right upon the Pariſh wherein they are, unleſs

1. A Special Preſcription caſt it on another.

2. Unleſs the Owner of the Land, in which they are, incloſe it, then it muſt be caſt upon the Owner.

But they that haveDitches on either ſide ought to ſcoure them,8 *H.* 7. 5.

Inns,
Ale-houſes,
Bawdy-houſes,
Gaming-houſes,
Nuſances.

Common

Common Inns.

1. ANY perſon may erect a Common Inn, ſo it be not *ad nocumentum.*

1. In reſpect of their multitude, when there are enough ancient Inns before.
2. In reſpect of the inconvenience of the place or ſituation.
3. In reſpect of Diſorders there committed.

All which are commou Nuſances, and may be fined and preſented.

2. He that erects a Common Inn and refuſes to entertain Gueſts, may be Indicted for the ſame.

3. If Common Inns, contrary to Statute, ſuffer perſons to tipple there as Ale-houſes, he may be compelled

pelled to be bound, or may be ſuppreſſed as Ale-houſe, or may be Indicted at Seſſions.

See for Ale-houſes, the ſuppreſſing of them, and the puniſhment for tippling in them, 5 *E.* 6. *c.* 25. *Jac. c.* 9. 4 *Jac. c.* 5. 7 *Jac. c.* 10. 21 *Jac. c.* 7. 1 *Car. c.* 4.

An Ale-houſe-keeper ſuppreſſed for the Offence, 7 *Jac. c.* 18. 21 *Jac. c.* 7. for ſuffering tippling, or 7 *Jac. c.* 10. for ſelling leſs than is there directed, or 21 *Jac. c.* 7. for continuing drinking in another Ale-houſe, or 21 *Jac.* for being drunk, cannot be licenſed in three years, and if it be, ſuch Licenſe void.

For-

Forgery, Perjury, Champerty.

OFfences not Capital more particularly by Statute.

Forgery by Stat. 5 *El. c.* 14.

Perjury and Subornation, 5 *El. c.* 9.

Champerty, Embraceries and Maintainance, 32 *H.* 8. *c.* 9.

Ingroſſing, Foreſtalling, and Regrating, 5 *E.* 6. *c.* 14.

Salt Victual within Statute.

Apples and Cherries no Victual.

Mault ſeems not Corn and Grain expreſly by 5 *E.* 6.

A Stranger, not Subject, bringing Victual into Realm, may ſell them in groſs, but Vendee cannot; neither may any Merchant buy with-

within the Realm, and ſell in groſs.

Attempting to inhance the price of Merchandize a kind of foreſtalling.

Selling Corn in the Sheaf unlawful.

Mat-

Matters of Religion.

1. REviling Sacrament Impriſonment, Fine, and Ranſom. 1 *E.* 6. *c.* 1. *Rep.* 1. *Ma. c.* 2. revived 1 *El. c.* 7.

2. Not coming to Church to hear Common Prayer, by 5 *E.* 6. *c.* 1. ſubject to Church Cenſures.

Nota, 3 *E.* 6. *c.* 1. ſettled a Book of *Common Prayer*, Enjoyned the uſe.

Refuſing to uſe, uſing other, or diſproving it, Impriſonment for ſix months for firſt, for ſecond a year, life for third.

5 *E.* 6. *c.* 1. Alters Prayers, but applies Penalties to new Book.

Nota, *Rep.* 1 *Ma.* that *Rep.* 1 *Jac. c.* 25.

1 *El. c.* 1. Enacts the uſe of the Book of 5 *E.* 6. with ſome Alterations.

1. Any

1. Any that refuſe it.
2. Uſe another form.
3. Deprave it, if Spiritual, ſix months Impriſonment firſt offence, one years Impriſonment ſecond Offence, Deprivation third Offence.

If Lay, firſt Offence twelve months Impriſonment, ſecond offence during life.

Depraving Book of Common-Prayer, firſt offence 100 Marks, ſecond offence 400 Marks, third offence Goods, and Impriſonment during life.

3 El. c. 1. concerning Conſecrating Biſhops.

Concerning rejecting Church.

1 El. 2. Every Sunday and Holiday *ſuper* 12 *per diem*, 23 El. *c.* 3. 10 *l. per menſem* for abſenting; and if abſent 12 months upon Certificate, bound to good behaviour.

29 El. c. 2. Conviction of Recuſancy.

35 El. c. 1. Penalty of diſſwading from Church, holding of Conventicles.

Convict to Priſon without bail until Conformity. Non-

Nonconformity within 3 months after Conviction, ſhall abjure the Realm.

Not departing or returning, Felony without benefit of Clergy.

Submitting diſcharged of the Penalty by this Act.

Relapſing loſeth benefit of Submiſſion.

Ten pounds *per menſem* for every perſon retaining or relieving Recuſant after notice.

C. 2. Recuſants not to remove, unleſs from dwelling.

1 Jac. c. 4. the heir of a Recuſant conformable, diſcharged third part forfeiture.

Penalty of ſending Children into Seminaries.

3 Jac. c. 4 & 5. Penalty for refuſing Oath of Supremacy.

1 El. c. 1.

5 El. c. 1.

Of Obedience, 3 Jac. 14.

7 Jac. c. 6.

Kings

Kings Bench.

Third Part.

NOW we come to consider of the Proceeding against a party for Felony, and therein

1. Concerning the Jurisdiction of Court wherein Proceedings are to be had in Capital Causes, and those are principally,
   1. Kings Bench.
   2. Justices of Goal Delivery.
   3. Justices of Oyer and Terminer and Assizes.
   4. Sheriffs and Coroners.
   5. Lord Steward of the Houshold.

The Kings Bench the Supream Court of Criminal Jurisdiction. It is a Court of Oyer and Terminer, Goal Delivery, and Eyre, in that County where it sits.

By

By the coming of the Kings Bench into any County, during the ſitting thereof in that County, all power and proceedings of Oyer and Terminer is ſuſpended. 9 R. Sanchars.

But a Special Commiſſion of Oyer and Terminer may be granted, bearing Teſt in the Term, and Kings Bench may adjourn, and then they may ſit. C.P.C. p. 27.

Where the Kings Bench proceeds upon an Offence committed in the ſame County, there need not fifteen days between Teſte and Return of *Venire facias*; but if they proceed upon a Cauſe removed by *Certiorari*, they muſt have fifteen days.

Goal Delivery.

9 R. Sanchars. JUſtices of Peace ought to deliver the Indictments not determined unto thoſe Juſtices, and they may Arreign any perſon in Priſon upon them.

2. They may take Indictments againſt any perſon in Priſon, and ſo may Juſtices of Over and Terminer, and herein they have a concurrent Juſtice.

3. They may take a Pannel returned by Sheriff without Precept.

4. They may deliver by Proclamation perſons ſuſpected, when there is no Evidence to Indict them.

5. May award Execution of perſons in Priſon Outlawed before Juſtices of Peace.

6. May aſſign Coroner to Appeal and make Proceſs againſt Appellors

lors in Foreign County.

7. May puniſh thoſe that unduly bail Priſoners, 1 & 2 *Ph. & Ma. c.* 13.

8. May deliver the Goal of perſons committed for High Treaſon.

9. May Receive Appeals by Bill againſt perſons in Priſon.

10. By Stat. 10 E. 3. muſt deliver their Records into Treaſury at *Michaelmas.*

11. Others may be added to the former Commiſſion by Commiſſion of Aſſociation, or their power committed to fewer by *Si non Omnes.*

12. By St. 2 & 3 Ph. & Ma. c. 18. a General Commiſſion of Goal Delivery through the County not be a Superſedeas to a Special Commiſſion granted in a Corporation, parcel thereof.

13. By St. 1 E. 6. c. 7. ſubſequent Commiſſioners of Goal Delivery, power to give Judgment upon ſuch as were Repreived by former Commiſſioners of Peace, Goal Delivery, Oyer and Terminer, and others not

continued by granting new Commiſſions.

If a Priſoner be bailed, he is yet in Priſon to be Arreigned before thoſe Juſtices, for he is a Priſoner; contrary in caſe of Mainprize. 21 H. 7. 33. 9 E. 4. 2. 39 H. 6. 27.

4 Inſt. 206. Although their Commiſſion determine with their Seſſion after they are gone, they may command a Reprieve or Execution. *Dyer* 205.

Licet ſoit ad Gaolum deliberandum hac vice uncore poit adjourner lour Commiſſion. Bro. Jur. 226.

Commiſſion d'Oyer & Terminer, & Goal Deliberand, poit Eſtoyer enſemble. Ibid. Bro. Commiſſion 24.

Juſtices d'Oyer & Terminer, & Goal Delivery, poit enquirer per ambideux powers, and make up their Records accordingly. 9 *H.* 7. 9. *Bro. Jud.* 226.

Oyer

Oyer and Terminer.

1. JUſtices Authority muſt be by Commiſſion, not by Writ, otherwiſe their Proceeding void.

2. They cannot proceed but by Indictment taken before themſelves.

3. *Nota*, By good Opinion they may proceed the ſame day or Seſſion againſt a party Indicted. *Nota le contrar' ad eſtre adjudge.*

4. Where Offences are limited to be heard and determined in any Court of Record, generally it may be heard or determined before them. *Quære* for *Gregory*'s Caſe *contra Dy.* 236.

5. Others may be added, or their power contracted by Aſſociation, or *Si non omnes.*

6. One ſitting without Adjourn-

ment determines the Commiſſion.

7. Juſtices of Oyer and Terminer, or of Peace, cannot aſſign a Coroner as Juſtices of Goal Delivery may.

8. By St. 9 E. 3. they are alſo to ſend their Records determined into the *Exchequer.*

9. A Superſedeas ſuſpends their power, a *Procedendo* revives it; the like of Commiſſion of *Niſi prius*, &c.

12 Aſſ. 21. But it determines not without notice.

1. By ſhewing the new Commiſſion.

2. Proclaiming it in the County.

3. Or Seſſions held by new Commiſſion.

10. An Award on the Roll not ſufficient to return a Jury, but a Precept under Seal of Commiſſioners.

C. P. C. p. 27. 11. And *Nota*, That a Special Commiſſion of Oyer and Terminer may be granted to ſit in one County to

to hear and determine Treaſon, &c. in another, but then the Indictment muſt be found in proper County, and the Tryal by Jurors of proper County.

By Stat. 27 E. 1. *de finibus* Juſtices of Aſſiſe have power to deliver Goals of Felons and Murderers.

And in caſe of Counterfeiting Coin, &c. upon Stat. 3 H. 7. St. 2.. c. 7. they may have a Special Commiſſion.

Juſtices of Peace.

THE Stat. of 18 E. 3. c. 2. gives them power by Commiſſion to hear and determine Felonies and Treſpaſſes againſt the Peace.

S.P.C.L.2. c.5. But then there muſt be a ſpecial Clauſe in their Commiſſion, *Necnon ad aud' & terminand' felonias, &c.* Otherwiſe they cannot do it.

Yet that Clauſe doth not improperly make Juſtices of Peace Juſtices of Oyer and Terminer, becauſe that it is a diſtinct Commiſſion; therefore a Statute, as that of 5 *El. c.* 14. limiting Forgery to be heard and determined before Juſtices of Oyer and Terminer, gives not the power therein to Juſtices of Peace, but Juſtices of Kings Bench are Juſtices of Oyer and Terminer within this Statute.

C.P.C. c.14.
Dal.c.20. 118.

By

By force of general words of their Commiſſions they may enquire of Murder at their Seſſions; for though by Stat. 6 E. 1. c. 9. and 4 E. 3. Murder and other Homicides muſt ſtay till Goal Delivery; yet the Stat. of 18 E. 3. c. 2. 34 E. 3. c. 1. 17 R. 2. c. 10. hath enlarged their Commiſſion and Power.

Yet in reſpect of Stat. 1 & 2 Ph. & Ma. c. 19. directs Juſtices of Peace to take Examinations in Caſes of Homicides and other Felonies, and to certifie them to Juſtices of Goal Delivery: in point of Diſcretion they do forbear to proceed to determine Felonies.

But for Petty Larceny, and other ſmall Felonies, they uſe to bind over Proſecutor to Seſſions.

Juſtices of Peace may proceed upon Indictment taken before themſelves, or ſome Juſtice of Peace: but cannot proceed upon Indictment before Coroner, or Oyer and Terminer; but Juſtices of Goal Delivery may; and Juſtices of Peace are to deliver Indictments taken before them

By St. 4 E. 3. c. 2.

them to Justices of Goal Delivery.

Cr.f.9. They cannot deliver persons suspect by Proclamation, as Justices of Goal Delivery may.

In Cases of Felony by Statute limitted to be heard before Justices of the Peace, they may proceed at Sessions, and consequently may bind over Informers, and certifie Examinations at Sessions.

But such Felonies by Statute as are specially limitted to Justices of Oyer and Terminer, or other Justices, and not to them, the Justices of Peace cannot proceed to take Indictments, as upon Stat. 3 H. 7. c. 18. for contriving to destroy the King, &c. upon Stat. 33 H. 8. 12. Murderers in Kings Palace upon Stat. 18 H. 6. c. 12. of razing or imbezelling Records upon Stat. 13 H. 6. c. 1. secret imbezelling goods upon St. 2 & 3 Ed. 6. c. 24. striking in one City, and dying in another City.

Dal. c. 20.

But in former cases it seems they may take Examinations, and commit the Offenders, and bind over Prosecutors.

If

If any Indictment be taken before Justices of Oyer and Terminer, Goal Delivery, or Coroner, they cannot proceed upon them; but upon Indictments taken before Sheriff in his Turn, they may proceed by St. 1 E. 4. c. 2.

In cases of Treason, Misprision of Treason, Premunire, regularly Justices of Peace have no Jurisdiction; yet two things may be done:

1. In any case of Treason, because 'tis a breach of the Peace, they may upon complaint imprison Offenders, take Examinations, bind Prosecutors over, and certifie their proceedings into Kings Bench or Goal Delivery.

2. In some cases they are enabled to take Indictments, but not hear and determine the same, but certifie the same into Kings Bench upon Stat. of 5 & 23 *El. c.* 1. & 1.

1. The Maintainer of the Authority of the Sea of *Rome*.
2. Obtaining Bulls, &c.
3. Withdrawing from Allegiance.

4. Bring-

4. Bringing in *Agnus Dei.*

A person brings one before Justice suspected of Felony, and refuses to be bound to prosecute, may be committed, if it appear he can testifie materially.

They may Enquire of any Felony within the County, though within the Verge. 4 *R. Wigg*'s Case. Co. lib. 4.

Coroner.

Coroner.

CORONER
Hath power in three Caſes:

1. To take Indictment of Death; but this he can only do *ſuper viſum corporis*, otherwiſe void. Hence

1. If Body be interred before he comes, the Townſhip amerced, and he muſt digg up the Body; ſo if Townſhip ſuffer Body to lie long to Putrefaction without ſending for Coroner: The like of one lying in Priſon.
2. If Coroner be remiſs, and comes not when ſent for, he ſhall be fined and impriſoned.
3. He may enquire of flight, and ſuch Preſentment not Traverſable.

4. If

4. If Body cannot be ſeen, Juſtice of Peace may enquire thereof.

Nota, The Record of the Coroner of great Authority; if he Record a Confeſſion of a Felony by Approver, or a Confeſſion of breach of Priſon, or an Abjuration, it ſhall not be Traverſed.

And it ſeems by ſome he hath power to enquire of Rapes, breach of Priſon.

He hath Juriſdiction upon Arms of the Sea, where a man may ſee from ſide to ſide.

2. Concerning Appeals.

Coroner, together with Sheriff, hath power in County Court to receive Appeals of Robberies and other Felonies, but then it muſt be of a Felony in the ſame County: Upon this Appeal they may grant Proceſs till Outlary; but it ſeems they cannot ſend an *Exigent*, becauſe prohibited by St. 6 *M. c.* 17.

St. P. C. 82.

Such Appeal may be by Bill, and it may be removed into Kings Bench by *Certiorari*, but it muſt iſſue both to Sheriff and Coroner.

St. P. C. f. 68.

It

It appears By St. 3 *H.*7. *c.* 1. That an Appeal of Murder by Bill lies before Sheriff and Coroner.

3. The Coroner alone may take the Appeal of an Approver of a Felony in any County.

But then he cannot make Proceſs thereupon, but enter it in his Roll, and ſend it to the Juſtices of Goal Delivery, who thereupon may iſſue their Proceſs to the Sheriff of the foreign County to take the Appellor. St. P.C. f. 59.

4. To take the Abjuration of him that acknowledges a Felony done in the ſame County, or any other.

And note, That though more Coroners than one in any County, yet any one may execute any of the powers before.

But the Preſentment of him that is firſt taken ſtands.

Abjuration dit eſſe toll oue Sanctuary per 21 *Jac.* 2 Inſ. 629.

Sheriff.

Sheriff.

THE power of the Sheriff to take Indictments, was either *Virtute Commiſſionis*, or *Officii*, which are taken away *per Stat.* 28 *E.* 3. *c.* 9.

His Power and Office in the Turns.

St. P.C. f. 84. 1. His Turn muſt be held *infra menſem Paſchæ & Michaelis*, otherwiſe the Indictments there are void *per St.* 31 *E.* 3. *c.* 15.

2. Indictments muſt be under Seal of the Jury by Stat. of *Weſt.* 2. *c.* 13. indented *per Stat.* 1 *E.* 3. *c.* 17. and the ſame for Lord of Franchiſes.

3. Indictors muſt be of good name, having 20 *s.* Freehold, or 26 *s.* 8 *d.* Copyhold, otherwiſe Sheriff puniſhable

niſhable by Stat. 1 *R.* 3. *c.* 4.

4. The Turn can take no Indictment but of that which is Felony by Common Law, or of ſuch matters as are particularly by Act of Parliament limited to them, and therefore an Indictment of Eſcape void there.

5. Upon any Indictment of Felony before Sheriff in his Turn, they can make out no Proceſs, but muſt remand them to Juſtices of Peace, who have power to proceed thereupon as if taken before themſelves, by St. 1 *E.* 4. *c.* 2

The Court-Leet in effect hath the ſame Juriſdiction with the Turn; but Preſentments of Felony before them are to be ſent before Juſtices of Goal Delivery, 3 *H.* 4. 18.

Appeal.

HAving conſidered the Courts of Juſtice, now we come to conſider the way of bringing Capital Offenders to Trial, and that is Regularly by one of theſe 3 ways,

Appeal.
Approver.
Indictment.

And herein ſome things are proper to each proceeding, ſome things are common to them all, which come to be conſidered after particulars proper to either diſpatched, *viz.*

Proceſs.

Arraignment; and therein of Principal and Acceſſary.

Demeanour of the Party Arraigned;

Stand-

Standing Mute.
Confeſſing.
Pleading and Pleas.

Declinatory,
Sanctuary.
Clergy.

In Barr,
Pardon.
Auterfoits Acquit.
Anterfoits Convict.

To the Felony.
Trial *per* Battel.
per Jury.
And therein,
Proceſs againſt Jury.
Challenge.
Verdict.
Per Peers in caſe of Nobility.
Judgment in the ſeveral Caſes
Capital.
Execution.
Reprieve.
Falſifier,
Per Errour.
Per Plea.

Appeal.

Appeals in reſpect of the manner of proceeding, are of two kinds;

By Writ.
By Bill.

Touching Appeals by Bill, they may be proſecuted,

1. In the King's Bench againſt any that is *in cuſtod' Marr'*, or let to Bail.

They are Sovereign Coroners.

2. In the Court before Commiſſioners of Goal Delivery againſt a Priſoner, or one let to Bail, but not to one let to Mainprize.

But if one of Appellees abſent, remove in *B. R.* by *Certiorari.*

3. By ſome before Juſtices of Peace, *quod Quære* 44 *E.* 3. *Coron.* 95.

4. Before Sheriff and Coroner, as before; and it may be removed by *Certiorari* in *B. R.* 3 *H.* 7. *c.* 1.

5. Before Conſtable and Marſhal, of a Felony done out of the Realm, 1 *H.* 4. *c.* 14.

Ap-

Appeals are in matter

1. Not Capital, as an Appeal of Maihem, which may be commenced in *K. B.* Goal Delivery, or before Coroner and Sheriff.

This, though it be Felony, yet 'tis but a Treſpaſs in Nature and Judgment.

2. Capital; and that either
   1. Of Treaſon, but this ouſted *per Stat.* 1 *H.*4.*c.*14.
   2. Of Felony; and theſe of three kinds,
      Death.
      Larceny.
      Rape.

An Appeal of Death is either by Wife or Heir.

1. Of an Appeal of Death by Wife, and therein theſe requiſites;
   1. She ought to be a wife *de jure*, and not *de facto* only; and therefore *ne onc' accouple* a good Plea.
   2. But ſhe need not be dowable; for if ſhe had Eloped, or the Husband been Attaint; yet ſhe may have an Appeal of his death.

3. She ought to continue his Widow; for if ſhe marry before, or pending the Appeal, the Appeal fails for ever; or if ſhe marry after Judgment ſhe cannot have Execution.

2. Appeal of Death by Heir.

1. If the dead have a wife, the heir ſhall not have Appeal though ſhe die: but if Wife kill Husband, there the Heir ſhall have an Appeal.

2. He muſt be Heir by courſe of Common Law; this hath theſe Exceptions:

1. Where Heir is diſabled through Attainder.

2. Where the Appeal is againſt the Heir, there the Appeal goes to the next Heir.

3. It muſt be Heir that was Heir at time of death of Anceſtor; for if he die within the year before, or after Appeal commenced, it is loſt.

But it ſeems if the Heir having Judgment

Judgment die, next Heir may have Execution.

4. It muſt be an Heir Male; *Nullus capiatur propter Appellum feminæ alterius quam viri ſui*: But if be Heir, and Male, though he derive through Females, he may have an Appeal.

5. A man above Seventy, or an Infant, may have an Appeal; but as Battel waged and adjudged of late times the Paroll ſhall not Demurr.

But an Ideot, Monk, Man mute, ſhall have no Appeal of death nor otherwiſe.

And *Nota*, the Appeal muſt be within year and day after death by Stat. 3 *E.* 6. *c.* 24. ſtriken in one County, and dies in another, or Acceſſary in one County, to death in another, Appeal brought where party died C.P.C.53.

Appeal Robbery.

Servant robbed Maſter or Servant may have Appeal.

But Teſtator robbed, Executor ſhall not have Appeal.

Villain ſhall not have Appeal of Robbery againſt his Lord, *contra* of death.

Two joint Owners robbed, Surviver ſhall have Appeal.

A Woman or Infant ſhall have an Appeal of Robbery.

If a man be robbed at ſeveral times, he muſt put all into one Appeal.

What omitted is Confiſcate.

The Appeal affirms the continuation of the property thereof. If *A.* rob *B.* in the County of *S.* and go with the Goods in the County of *D.* an Appeal of Larceny lies in that County of *D.* but not of robbery, for that is upon the taking from the perſon.

If *A.* be robbed by *B.* who is robbed by *C.* *A.* may have an Ap-

Appeal of Larceny againſt *C.*

This Appeal may be proſecuted in a year, two, or three, if there was freſh ſuit; and the judging of freſh ſuit lies in diſcretion of Court.

And *Nota*, This, or any other Appeal lies againſt an Infant, againſt a Monk, without naming his Sovereign, againſt a Feme convert without naming her Husband.

Appeal of Rape.

1. Lies for party raviſhed.

2. But if ſhe conſented to Rape afterwards, then by Stat. *6 R. 2. c. 6.* it is given to the Husband; if none, to the Father; if none, to the Heir, whether Male or Female.

If ſhe be taken in one County, and raviſhed in another, the Appeal of Rape lies in County where raviſhed.

Although by Stat. *W. 1. c. 13.* whereby Rape was turned into Treſpaſs, forty days were limited for her Suit; yet it being again made Felony by Stat. *W. 2. c.* and not

no time limited, it may be brought in any reaſonable time.

Proceſs.

Count and Plea to the Writ.

Concerning Proceſs in Appeals, *v. infra* Proceſs in general, becauſe many things therein common to Appeals and Indictments.

The Count in Appeals.

1. The Plaintiff in his Appeal muſt mention the place and day, need not mention the hour; and though day be miſtaken, not material upon Evidence.

2. It ſufficeth for Plaintiff to count againſt Defendant, according to the conſtruction that the Law maketh upon the Fact.

If *A. B.* and *C.* preſent, *B.* only ſtrike the mortal ſtroke, he may count againſt them all, that they ſtroke: So in Rapes.

3. An Appeal by Heir ought to ſhew Coment.

4. In

4. In Appeals of Rape, *felonice rapuit* is ſufficient with *carnaliter cognovit*, *vid.* 11 *H.* 4. 1.

5. In Appeals againſt *A. B.* and *C. A.* only appears, he muſt count againſt all *per* better Opinion.

6. At this day one Appeal againſt all Perils and Acceſſaries, and if an Attaint be againſt *A.* and he is attaint or acquit, or Plaintiff nonſuited, he cannot have another Appeal againſt *B.* But if Acceſſaries in one County to Felony in another, their ſeveral Appeals againſt Principal and Acceſſaries.

Writ of Appeal abate.

1. For inſufficiency in the Writ, as wanting *rapuit*, falſe Latin.

2. Multiplicity of Action, ſecond Writ of Appeal purchaſed, pending a former Bill in the County, abates not.

But if firſt Appeal by Bill was removed into *B.* by *Certiorari*, and the Plaintiff had appeared thereupon, and counted, abates the ſecond.

Nul

Nul tiel in rerum natura, as one of the Defendants abates.

Pleas in Barr.

Vid. infra un general Title as to *Autrefoits*, Convict or Acquit.

1. He may plead any thing whereby it appears the Plaintiff is not intituled to Appeal *de quo v. ſupra.*

2. Nonſuit in a former Appeal after Declaration, ſo of a *Retraxit* of the ſame, the Plaintiff brought an Appeal.

3. Felony againſt another, who was Attaint or Convict at his Suit.

4. Plaintiff hath releaſed to Defendant, but if Appeal againſt Divorce, a Releaſe or *Retraxit* as to one no benefit to the other.

5. If Defendant plead in Barr, he may alſo plead over to Felony, and it ſhall not be double.

1. But in caſe of Releaſe pleaded, he ſhall not plead over to Felony, becauſe repugnant.

2. In

2. In caſe of Villenage pleaded he ſhall not plead to the Felony, becauſe Infranchiſement; yet if that barr found againſt him, he may plead not Guilty; and ſo in any other caſe where he pleads in Barr without pleading over, except in Releaſe.

Ap-

Approver.

1. WHAT it is to be an Approver?

A perſon Indicted of Treaſon or Felony not diſabled to accuſe before competent Judges, confeſſing the Indictment, and ſworn to reveal all Treaſons and Felonies he knows, and then before a Coroner entring his Appeal againſt *participes Criminis* in the Indictment within the Realm.

St.P.C. 142.

2. Who may be an Approver?

1. A Peer of the Realm cannot be an Approver.
2. A perſon Attaint cannot be an Approver.
3. A Woman, Infant, Ideot, *Non compos*, &c. Clerk, cannot be an Approver.
4. But a man above ſeventy, or maim-

maimed may, but he cannot wage Battel.

5. Clerk Convict may.

3. In what caſes?

1. None can approve but a perſon Indicted, & therefore if only in Priſon upon ſuſpicion, he may indeed confeſs the Felony, but ſuch Confeſſion amounteth not to an Attainder or Conviction, though it be an Evidence, and therefore cannot approve.

2. The Appellee in Appeal cannot be an Approver.

3. The Appellee of Approver cannot be Approver, for that would be infinite.

4. Though a perſon Indicted approve, yet if after Appeal be againſt him, Approver ceaſeth.

5. He that hath once pleaded to the Felony cannot be an Approver, but ſhall be hanged, for he is found falſe.

4. Of

4. Of what Offences?

It muſt be only of the Offences contained in the Indictment, be it Felony or Treaſon, and therefore not of another Offence, nor of an Acceſſary before or after to the ſame, yet his Oath general, therefore as to other Offences, it is but a Detection, not an Approvement.

5. Before whom?

Before ſuch Judges only as can aſſign, as Kings Bench, Goal Delivery, Oyer and Terminer, High Steward; but not before Juſtices of Court Baron or County Court.

But it is in the diſcretion of the Court to ſuffer him to be Approver, or to reſpite Judgment and Execution, till he hath Convicted all his Partners.

6. How Demeaſned after Appeal?

1. After Felony confeſſed upon Arraignment, a Coroner aſſigned and ſworn in Court to diſcover Offenders.
2. A day prefixt, within which he is to perfect his Appeal before

before the Coroner, and in every of theſe days he muſt Appeal; for if he fail, and Court record it, to be hanged.

The limit to perfect his Appeal by 5 *E.* 3. *c.* 34. 183 days, but that Repealed 15 *El.*

3. During time limited for his Appeal, he ſhall be at large, and have 1 *d. per diem* till Appeal perfected.

4. If he Appeal perſons beyond Sea, or if Appeal ſuch as are not in *rerum natura*, and that appear by Teſtimony of County, or by Retorn of Sheriff, *quod non fuit invent'*, he ſhall be hanged.

5. After his Appeal formed before Coroner, he muſt repeat it *verbatim* to Court; and if he fail thereof, and Court Record it, he ſhall be hanged.

7. Proceſs in Appeal.

1. In the ſame County Coroner may award Proceſs to Sheriff till Exigent.

2. If Appellee be in a foreign County, yet the Judges before whom the Appeal is, may grant Proceſs, *viz.* *B. R.* or *Itinerant* by Common Law.

And by Stat. 28 *E.* 3. 1. *de Appellis*, the Juſtices of Goal Delivery may ſend Proceſs into a foreign County, as well to apprehend the Appellee, as a *Venire Facias* to try the Iſſue.

8. Proceedings upon Trial.

The Appellee may put himſelf upon County, or wage Battel.

If five Appellees, and they wage Battel, he muſt fight them all.

If two approve againſt one Appellee, if the Appellee vanquiſh the firſt, he is acquitted againſt the reſt: though Appellor retract his Appeal, or

or be vanquiſhed; yet if Offence be within Clergy he ſhall have it; and ſo of Appellee.

9. Proceedings after Trial.

If Appellor convict Appellee, either by Battel or Verdict, the King *ex merito juſtitiæ* is to pardon him; and from the time of his Appeal till his Pardon or Conviction, ought to have wages.

Indictments.

THESE things conſiderable:

1. Where an Indictment requiſite in caſes Capital, where not.

2. What the quality of the Indictor.

3. Of what matters they may Enquire.

4. Before whom found.

5. What requiſite in the manner of them.

1. Where an Indictment requiſite for party to be Arraigned at King's Suit.

1. By ancient Common Law, if a man was taken in Larceny with the manner, and that brought into Court with Priſoner, Priſoner ſhall be Arraigned thereupon without Indictment. *St.P.C.f.*148.

And

And ſuch was the uſe of the Manor that had infang Thief, *Ibid. f.* 29. *v.* 1 *E.* 3. 17. 17 *Aſſ.* 99. but this diſuſed.

2. If Treſpaſs be brought *de muliere abductâ cum bonis viri*, and the Defendant found Guilty: or if in Treſpaſs for Goods the Defendant be found that he ſtole them, this in the King's Bench equivalent to an Indictment, and the Defendant be put to anſwer Felony. 8. P. C. f. 94.

3. In ſome Caſes upon Appeals by Appellors or Approvers not proſecuting, &c. Defendant Arraigned at King's Suit, becauſe it carries a preſumption of truth; and therefore if Defendant be both Appealed and Indicted upon a non proſecution of the Appeal, the party ſhall be Arraigned upon the Appeal, not the Indictment. 4 *E.* 4. 10.

Wherein.

1. If Plaintiff in Appeal by Writ be Nonſuit before Declaration, he ſhall not be Arraigned at King's Suit.

1. Becauſe not certainty.
2. Writ may be at anothers Suit, but if it be by Bill, either by Appellor or Approver, it ſeems he ſhall, becauſe the certainty appears; therefore in the former Caſe, if there be no Indictment againſt him he is diſmiſſed.

2. If Plaintiff releaſe his Appeal after he hath commenced it, party ſhall be Arraigned at Kings Suit.

But if before it was commenced, then not.

3. If Plaintiff or Approver after Appeal commenced, confeſs it falſe, Appellor hang'd, and Appelle diſcharged, becauſe amounts to a vanquiſhment.

4. If Appeal abate by Act of Plaintiff, as taking Husband, or act in Law, as death, Appellee Arraigned at King's Suit; but if it abate by inſufficiency in the Appeal, as by falſe Latin, Miſnomer, or becauſe Plaintiff diſabled to commence Appeal, as Utlary of Felony, or Treſpaſs, or the year or day paſt, or Plain-

Plaintiff not Wife or Heir of Defendant, not Arraigned upon Appeal, but may be Indicted.

5. If King pardon after Battel joined in Appeal by Approver, no Arraignment at King's Suit, but Appellee discharged.

And note where Prisoner Arraigned upon the Appeal, a Cesset Process is entred upon the Indictment. C.P.C.184.

The return of the Sheriff of Rescue or Escape of a Felon, not sufficient to put the party to answer the Felony.

2. The second considerable is the quality of the Indictor.

Concerning Indictments in Leets and Turns, *v. ante* upon Stat. *W.* 2. *c.* 13. 1 *E.* 3. *c.* 17. 1 *R.* 3. *c.* 4. 1 *E.* 4. *c.* 3.

There is a general Statute that refers all Indictments, as well in case of Felony as Treason, 11 *H.* 4. *c.* 9. which requires

1. Indictors not to be
   1. Persons fled to Sanctuary for Felony or Treason.

2. Not outlawed.

3. Not Indicted or Attainted.

4. Not by Conſpiracy.

2. That Indictors be the King's Liege people.

3. Returned by the Sheriff, as Bailiff of Franchiſes.

4. Not at the Denomination of any perſon.

And all Indictments taken contrary are void.

Hence it follows

1. That Priſoner upon Arraignment may plead this matter, or any point of it, and may plead over to the Felony. *Vide Scarle*'s Caſe.

2. Though there be twenty of the grand Jury, yet if one was outlawed or taken at the Denomination of another, it voids the whole Indictment.

By Stat. 3 *H.* 8. *c.* 12. Juſtices of Goal Delivery, or of Peace, whereof one of the *Quorum*, in open Seſſions may reform the Pannel of the Grand Jury, by putting and taking out Names, and the Sheriff is to return the Pannel ſo reformed.

But

But this takes not away former Statute of 11 *H.* 4. nor alters it.

By Stat. 33 *H.* 6. *c.* 2.

Special proviſion is made for quality of Indictor in *Lancaſhire.*

3. Of which things they can Enquire.

Regularly they can Enquire of nothing but what ariſeth within the Body of the County for which they are retorned.

And therefore if an Indictment for ſcandalous words, or other matter tranſitory be found upon not Guilty pleaded thereunto, if upon Evidence it appear to be ſpoken in another County, Defendant is not Guilty.

And therefore where ſtroke was in one County, and death in another, he could not be Indicted where party died.

But for a Nuſance in one County to another, a Jury in County where Nuſance is committed may Indict.

But divers Statutes have introduced alteration of the Law in ſome Capital

Capital Caſes, 28 *H.* 8. *c.* 15. Treaſons, Felonies, Robberies, Murders and Confederacies upon the Stat. may be enquired, tried, heard, determined, and judged in ſuch places as ſhall be limited by King's Commiſſion to be directed for the ſame.

A Treaſon done out of the Land, it hath been held that it may be enquired of and tried where Offender landed; but to amove the Queſtion by Stat. 35 *H.* 8. *c.* 2. all Treaſons and Miſpriſions, or concealments of Treaſons done out of *England*, may be enquired, heard, or determined by Juſtices of King's Bench, by perſons of the County where Bench ſits, or before Commiſſioners, and in ſuch Shires as ſhall be appointed by King's Commiſſion, and by good men of the ſame Shires, as if the Treaſons, &c. had been done in the ſame Shires where enquired.

Upon this Statute.

C.P.C.f.7. 1. If Bench remove after Indictment into another County, Trial ſhall be by perſons of firſt County.

2. The

2. The King writing his name to Commiſſion, or putting his ſign to the Warrant ſufficient.

3. *Ireland* is out of the Realm to this purpoſe.

The Statutes ſtand unrepealed by Stat. of 1 *Ma. c.* but the Stat. of 32 *H.* 8. *c.* 4. for trial of Treaſon in *Wales* repealed by 1 *Ma.*

Again, by Stat. 2 & 3 *El. c.* 24. a man ſtriken in the County of *D.* dies in the County of *S.* or Acceſſary in one County to Felony in another County, may be indicted and tried in County where death was, for Felony committed *per* Principal, but it muſt be laid according to truth.

If Enqueſt conceal any matter preſentable before Juſtice of Peace, they may Impannel Inqueſt to enquire of ſuch concealment, and amerce Concealers by Stat. 3 *H.* 7. *c.* 1.

4. Before whom found.

Of this before.

5. The

5. The form of Indictments.

1. By Statute.

4 *H.* 4. *c.* 2. *Inſidiatores viarum & depopulatores* to be omitted in Indictments; and if inſerted, yet Clergy not thereby taken away.

37 *H.* 8. *c.* 8. Indictment what, to be quaſhed for want of words, *viz. gladiis, baculis, & cultellis.*

2. At Common Law:

Want of certainty vitiates, want of year, day, and place.

Indictment for Eſcape of one taken on ſuſpicion of Felony, without ſhewing what Felony *Mal.*

Indictment for receipt of a Felon without ſhewing who ſecured, *Mal.*

Indictment for making Alchimy *ad inſtar pecuniæ Regis*, without ſhewing what money, *Mal.*

Indictment *quod cepit*, or *furatus eſt*, without ſaying *felonice abduxit equum*, without ſaying *cepit* or *carnaliter cognovit*, without ſaying *Rapuit*, or *Bulglariter*, when it ſhould

ſhould be for *Burglariter*; or if Felony before Juſtice of Peace, without ſaying *necnon ad diverſas felonias*; if in murder with a Gun, without ſaying *percuſſit*, *Mal.*

Indictment ſuppoſing the ſtroke 1. *Auguſti*, death 2. *Auguſti*, *& ſic felonice murdravit* 1. *Auguſti*, *Mal.* but *ſic murdravit modo & forma præd'*, or *præd'* 1. *Auguſti*, *Bon.*

Indictment *quod dedit mortalem plagam circa pectus*, *Mal.* but *in ſiniſtram partem ventris circa*, *Bon.*

Indictment *de morte cujuſdam ignoti*, or *felonice cepit bona*, *&c. cujuſdam ignoti*, or *domus Eccleſiæ*, *Bon.* C.P.C.c.62.

1. *Proof upon Indictments.*

In caſe of Treaſon or Miſpriſion by the Stat. 1 *E.* 6. *c.* 12. 5 *E.*6.*c.*7. there ought to be lawful Accuſers.

1. Eye witneſſes upon every Indictment.

An Accuſer by hearſay is no lawful Accuſer within this Statute. C.P.C.24.

The

The neceſſity of ſuch proof upon Indictment of Treaſon is not taken away by Stat. 1 & 2 *Ph. & Ma. c.* 11. but only in the caſe of counterfeiting Coin.

St. P. C. 154. But theſe Witneſſes need not be preſent with the Indictor, but they may ſend to them in writing.

Pro-

Proceſs.

NOW we come to thoſe Proceedings that are common for moſt part both to Appeals and Indictments. And

1. Of Proceſs.

1. Upon an Indictment or Appeal of death but one *Cap.* and then *Exigent*: but in caſe of Robbery, then by Stat. 25 *E.* 3. *c.* 14. two *Capias*'s, then *Exigent*; but this Stat. extends not to death.

2. Indictments or Appeals of Treſpaſs, or any Felony and Treſpaſs againſt a perſon of another County after one *Cap.* a ſecond *Cap.* with Proclamations, ſhall be granted to the Sheriff of that County wherein he is ſuppoſed to be con-

converſant before an *Exigent* ſhall iſſue *per Stat.* 8 *H.* 6. *c.* 10. And upon this Statute Proceſs ſhall go to a County Palatine; and if in the Indictment he be ſtiled *nuper de*, and ſo in ſeveral Counties, then ſecond *Cap.* ſhall go to every County.

Prin-

Principal and Acceſſary.

IF one preſent did nothing, but yet came to aſſiſt party if need; or if one hold the party while Felon ſtrike him; or if one preſent his weapon to the other that ſtrikes, for they are *præſentes*, *auxiliantes*, or *confortantes*.

But if one come caſually, not of the Confederacy, though he hinder not the Felony, he is neither Principal nor Acceſſary, although he apprehend not the Felon. S.P.C.f.40.

In ſome caſes a perſon abſent may be Principal.

1. He that puts poiſon into any thing to poiſon another, though not preſent when taken; and ſo it ſeems are all thoſe that are preſent when the poiſon is ſo infuſed, and conſenting thereto.

2. If upon the ſame Ground, or

in the ſame Houſe, though not within view of Fact, when many come to do an unlawful act: See before Lord *Dacres* and *Budſey*'s Caſe in Murder and Robbery.

3. By ſpecial Act of Parliament, or upon the Stat. 3 *H.* 7. *c.* 2. 8 *H.* 6. 12.

Acceſſary before, he that commandeth or aſſenteth to the committing of a Felony, and is abſent when done.

† R. Blyths C. 1. In Manſlaughter there can be no Acceſſary before, becauſe done without premeditation.

2. Where Receipt to make an Acceſſary, muſt be knowing him to be ſuch.

But if a man be Attaint of Felony in the County of *A.* the Law preſumes notice thereof in the ſame County, therefore the receipt of him in the ſame County ſeems Acceſſary; contrary if in another.

Videtur cognitio requiſite in utraque.

3. Re-

3. Receipt of a Felon that hath given Bond to appear at next Seſſion, &c. not Acceſſary.

4. Relieving a Felon with Money, Victuals, Horſe for his Journey knowing, Acceſſary; but if he be in Priſon, then lawful.

5. A brother receiving a brother may be Acceſſary, or a Husband his Wife, but not Wife of her Husband.

2. Where Execution varies from Command.

In perſon ſlain; as a command to kill *A.* and he kills *B.* or in the nature of the Offence; as Command to rob as he goes to Market, and he breaks open Houſe and robs it, the Commandant is no Acceſſary.

3. But a command to poiſon *J. S.* and he ſhoots him; a command to rob or beat *J. S.* he beats him to death, the Commander Acceſſary.

4. If *A.* command *B.* to kill *C.* and before Fact *A.* repents, and countermands his command, yet *B.* kill him, *A.* is not Acceſſary.

5. If *A.* poiſon an Apple, and deliver it to *C.* to deliver to *D.* *C.* not knowing delivers it, Murder in *A.* but no Offence in *C.*

Acceſſaries after

St.P.C.41. 1. A receipt of ſtollen Goods makes not Acceſſary, unleſs he receive Thief.

A man may be Acceſſary to an Acceſſary: And

The ſame man may be Principal and Acceſſary where Felony done by divers.

6. But ſending a Letter in favour of a Felon, inſtructing him to read, adviſing to labour witneſſes, not revealing a Felony intended, permitting a Felon to eſcape without Arreſt, makes no Acceſſary.

7. Acceſſary cannot be unleſs a Felony committed; therefore *A.* wounds *B.* dangerouſly, *C.* receives *A.* *B.* dies, *C.* not Acceſſary.

Ar-

Arraignment of Principal and Acceſſary, and things Obſervable therein.

1. IF Principal be acquitted, or be convict only of Manſlaughter, or *ſe Defendendo*, or before his Attainder hath his Clergy, or be pardoned, or die, the Acceſſary ſhall not be Arraigned; otherwiſe if after Attainder. C.P.C.47.139. 4 R. Seyers C.

2. If Principal be attaint at Suit of the King, the Acceſſary ſhall not be Arraigned at Suit of party.

3. If Principal ſtand mute, Acceſſary not Arraigned.

4. *Exigent* ſhall not go out againſt Acceſſary till Principal attaint *per Stat. W.* 1. *c.* 14.

5. Where Principal appears not, Acceſſary ſhall be put to anſwer: but he ſhall not be tried till Princi-

pal attaint or appear, unleſs he will, for he may wave the benefit of the Law.

6. If he be Indicted as Acceſſary to two, and one of Principals appears and is convict, the Court may, if they pleaſe, try the Acceſſary; and if he be found Acceſſary to him that is attaint, he ſhall be condemned; if not found Acceſſary to him, yet he may be afterwards Arraigned as Acceſſary to the other when he appears. St. P.C. 47.

7. If Principal and Acceſſary appear and plead a Felony, they may be tried by ſame Inqueſt; but the Principal muſt be firſt Convict, and have Judgment, before Judgment againſt Acceſſary, and the Jury ſhall be in Charge, that if they find principal not guilty, they ſhall find the Acceſſary *non Cul.*

8. If Principal be Erroneouſly attainted, yet Acceſſary ſhall not take advantage thereof, but be Arraigned.

9. If

9. If Murder or other Offence were in one County, and Acceſſary in another *per Stat.* 2 *E.* 6. *c.* 24.

1. If Acceſſary be in *Middleſex*, and where the King's Bench ſits, and Principal in another County, King's Bench may try Acceſſary. C.P.C.p.44

2. Certificate in ſuch caſe ſhall be upon a *Certiorari* or Special Writ, if need be, formed upon the Matter, and not by Precept, under their Seals, and in their own Names. Ibid.

High Steward within the Act.

Mute, paine fort & dure.

NOW we come to the Demeanour of the Priſoner upon his appearance.

And thereupon either,

1. He that ſtands mute.
2. He that pleads.
3. Or confeſſeth the Fact.

What is ſaid ſtanding mute?

This of two kinds.

1. When he anſwers nothing at all, and it ſhall be enquired whether he ſtand mute *per* malice or *per* act of God.

If it be by act of God, then Felony ſhall be enquired of, and whether he be the ſame perſon as if he pleaded not guilty.

De paine fort & dure.

1. If by malice, or if Priſoner hath cut out his own tongue, then Priſonner ſhall have Penance.

2. When

2. When he pleads, but not effectually; as when he anſwers not directly to the Fact, or concludes not upon the Countrey, then if the cauſe be probable, he ſhall be put to his Penance. *C.P.C. p.*227. *De paine fort & dure.*

2. What the conſequent of ſtanding mute?

1. In Treaſon 'tis a Conviction.

2. After Attainder and ask't what he can ſay why no execution, ſtanding mute he ſhall be Executed.

2. In Appeal ſtanding mute, Judgment againſt him to be hanged.

4. Upon Stat. 33 *H.*8. *c.*2. of Felony within Verge, Offender ſtanding mute Judgment againſt him.

5. But in other caſes of Felony, *paine fort & dure*, and forfeits Goods.

1. Remanded to Priſon.

2. Lie naked in ſome dark Room with hands and legs extended.

3. Weights increaſed.

Pleas.

Pleas.

IF Priſoner plead, it is either Declinatory,

1. Sanctuary, Clergy.
2. Or to the Felony:
   1. Demurring.
   2. Pleading in Barr.
   3. Pleading general Iſſue.

Declinatory Exceptions.

1. Sanctuary and the Conſequents *abjuratio* ouſted by Stat. 21 *Jac. c.* 28.

2. Clergy wherein
   1. Who ſhall have benefit of Clergy?
   2. In what Caſes?
   3. At what time?
   4. Who the Judge?
   5. What the Conſequent?

1. Who ſhall have Clergy, and who not?

1. A blind man ſhall not have his Clergy.
2. A woman Covert ſhall not have benefit of Clergy.

Proviſion by Stat. 21 *Jac. c.* 6. that for ſtealing Goods under 10 *s.* without Burglary or Robbery, &c. he ſhall be burnt in the hand for the firſt Offence. C.P.C.c.124.

3. Bigamy ouſted of Clergy *per Stat. de Bigamis* 4 *E.* 1. but reſtored to it *per Stat.* 1 *E.* 6. *c.* 12.

2. In what caſes ſome things permitted in general.

1. *Per Stat.* 25 *E.* 3. *c.* 4. *per Cler.* Clergy allowed in all Treaſons and Felonies, except Treaſons againſt King; ſo that after that Statute, there was Clergy in all Caſes except Treaſon and Sacriledge.
2. Conſequently whereſoever Clergy is not allowable, it is taken away by ſome Act of Parliament.

3. Con-

3. Conſequently where any Felony is made by a new Stat. Clergy is to be allowed, unleſs expreſly taken away.

4. Conſequently whereby any new Act of Parl. Clergy is taken away in any Offence, the Indictment ought to bring the Caſe within the Act.

As upon the Stat. 3 & 4 *Ph.* & *Ma. c.* 4. the Indictment ought to run *Malitioſe*; ſo upon Stat. 8 *El. c.* 9. it muſt *clam* & *ſecrete*; in caſe of Murder, *ex malitia præcogit'*, otherwiſe Clergy allowable.

5. Conſequently a Statute taking away Clergy from Principal, doth not thereby take it from the Acceſſary before, unleſs ſpecially provided for.

6. Where Clergy allowable, it is to be allowed though the party be Convict by Confeſſion, Verdict, or ſtands Mute, or challenges peremptorily above 35.

3. Par-

3. Particular Offences where Clergy, and where not.

1. High Treaſon.

2. Petty Treaſon.

Principal ouſt of Clergy if convict by Verdict or Confeſſion *per Stat.* 23 *H.* 8. *c.* 1. revived *per* 5 & 6 *E.* 6. *c.* 10. and *per Stat.* 25 *H.* 8. *c.* 3. the ſtanding Mute not directly anſwering, or challenging above twenty.

Not ouſt of Clergy in Appeals, unleſs Convict by Verdict or Confeſſion.

Acceſſary before Fact maliciouſly, ouſt of Clergy in all caſes *per* 4 & 5 *Ph.* & *Ma. c.* 4.

3. Wilful Murder of Malice prepenſe, ouſt of Clergy in all caſes *per Stat.* 23 *H.* 8. *c.* 1. 25 *H.* 8. *c.* 3.

Acceſſary before maliciouſly, ouſted in all caſes *per* 4 & 5 *Ph.* & *Ma. c.* 4.

4. Ar-

4. Arſon of Houſes, or Barns full of Corn, Principal ouſt of Clergy in all caſes, *viz. ſur* Conviction upon Verdict, or Confeſſion *per* 23 *H.* 8. *c.* 1. upon ſtanding Mute, not direct anſwering, challenge above twenty, *per Stat.* 25 *H.* 8. *c.* 3.

Acceſſary ouſted of Clergy in all caſes *per.* 4 & 5 *Phil.* & *Ma.*

5. Simple Burglary.

Principal ouſted of Clergy if Outlawed, Convict by Verdict, or Confeſſion.

Not ouſted if ſtand Mute, challenge above twenty, or not anſwering.

Acceſſary before or after not ouſted of Clergy.

6. Burglary, any perſon being in the Houſe, or put in fear or dread.

Principal ouſt of Clergy in all caſes, *viz. per Stat.* 1 *E.* 6. 12. in caſe of any Conviction or Attainder; and *per* 25 *H.* 8.

H. 8. *c.* 3. revived *per* 5 & 6 *E.* 6. *c.* 10. it takes away Clergy where above twenty challenged.

But Acceſſary not ouſted of Clergy for Acceſſaries before, *vide* 4 & 5 *Ph.* & *Ma.* 4.

7. Robbery, which hath ſeveral qualifications with theſe conſiderations.
   1. In or near the High-way.
   2. In the Dwelling-houſe.
      1. Putting party, his wife, or ſervants in fear.
      2. Party, his wife, or ſervants in houſe, but not in fear.
      3. Neither party, his wife, nor ſervants in the houſe, nor put in fear, where it extends to the value of five ſhillings.

In Appeals or Indictments againſt Principal and Acceſſary, *per Stat. W.* 1. *c.* 14. Proceſs of Outlary muſt ſtay againſt Acceſſary till Principal attaint.

But

But if it be an Appeal by Writ which is general till Declaration, the Plaintiff muſt at his peril diſtinguiſh the Proceſs; for if he take his *Exigent* againſt all, he muſt Count againſt all as Principals.

An Appeal againſt divers, one appears and pleads to the Writ, or in Barr, which goes to all, Proceſs of Outlary ſhall ſtay againſt reſt till Plea determined.

An Indictment or Appeal may be removed in *B. R.* by *Certiorari*, but it muſt accord with the Appeal.

Upon an Appeal moved *per Certiorari*, the Plaintiff is without day; and to compel Plaintiff to proceed, Defendant may take out a *Scire Facias*, and upon 2 *Niſies* or a *Scire Feci*, and default, Plaintiff diſcharged.

But the Plaintiff upon ſuch Appeal removed, may have *Capias & Exigent.*

If

If Defendant comes in by *Capias*, and after appearance make default, a new *Capias*; if upon *Exigent*, a new *Exigent*; and upon ſecond appearance ſhall plead *de novo*, for the firſt Iſſue is *ſine die*.

Arraignment.

1. IN what manner a Perſon is to be Arraigned?

The Priſoner, all the time of his Arraignment ought to be in Iron.

2. Where Arraignment upon ſeveral Appeals or Indictments.

If a man be appealed of Robbery or Death at the Suit of one, he ſhall be Arraigned and Tried at Suit of another, becauſe they have ſeveral in the Judgments.

And now the ſame Law is of an Indictment of Robbery, becauſe by Stat. 21 *H.* 8. *c.* 11. the party is to have Reſtitution.

But if Appeal by one be not commenced till after Attainder at Suit of another, he ſhall not be Arraigned upon the other Suit; but if the firſt Attainder be pardoned, he ſhall be Ar-

Arraigned upon the ſecond Appeal commenced after Attainder.

But after Attainder of Felony, he may be Arraigned of Treaſon for King's Intereſt.

By the Common Law, a Clerk convict ſhould have anſwered all Felonies, and were acquit or convict at Suit of others. But this was remedied *per Stat.* 25 *E.* 3. *c.* 4. *per Clero*, and therefore after that Stat. the Clerk convict and delivered to the Ordinary, was diſcharged of all former Felonies whereof he was not Arraigned before Clergy, and that thoſe, though other Offences were not, within Clergy. *Dyer* 214.

But now by Stat. 8 *El. c.* 4. after Purgation, and 18 *El. c.* 7. after burning in the hand, he ſhall be put to anſwer former Felonies upon Appeal or Indictment.

3. Concerning Arraignment of Principal and Acceſſary.

1. Who ſhall be ſaid an Acceſſary?

1. Who an Acceſſary { Before. / After.

1. In Treaſon no Acceſſaries, but all Principals; a Procurer before, or a Receiver knowingly after, is guilty as Principal in High Treaſon.

C.P.C.p.138.

2. Where an Act of Parliament makes a Felony, it doth incidently make ſuch Acceſſary as would be Acceſſary before or after to a Felony at Common Law, as in Caſe of Buggery, Rape, &c.

3. Acceſſary cannot be guilty of Petty Treaſon where Principal but Murder.

4. If divers come to commit an unlawful act, and be preſent at time of Felony committed, though one of them only doth it, they are all Principals.

So if one preſent move the other to ſtrike.

And

And now to purſue the point where Clergy allowable in Robbery.

1. From the Perſon

Without putting in fear, but *clam & ſecrete*: by Stat. 8 *El. c.* 4. Principal in all caſes ouſt of Clergy, Acceſſary not ouſt.

With putting in fear Robbery in or near the High-way.

1. Principal in all caſes ouſt of Clergy, *viz.* Appeal or Indictment by 23 *H.* 8. *c.* 7. Convict 23 *H.* 8 *c.* 1. Attaint 1 *E.* 6. *c.* 12.

Challenge above twenty by Stat. 25 *H.* 8. *c.* 3. 5 & 6 *E.* 6. *c.* 14.

2. Acceſſary before ouſt of Clergy in all caſes by 4 & 5 *Ph.* & *Ma. c.* 4.

2. From Dwelling-houſe; and this of three kinds:

1. Owner, wife, or ſervants being in the houſe, or put in fear, here Clergy taken away.

1. As to Principal, taken away *per* 23 *H.* 8. *c.* 1. in caſe of Conviction by Verdict, or Confeſſion, and *per* 25 *H.* 8. *c.* 3. revived, and *per* 5 & 6 *E.* 6. *c.* 10.

In caſes of ſtanding mute, challenge *ultra* twenty, not directly anſwering: Alſo to a Conviction in foreign County, if it appear by Examination not to be within Clergy in the ſame County.

2. Acceſſaries before in all caſes ouſted of Clergy *per Stat.* 4 & 5 *Ph.* & *Ma. c.* 4.

Note, A Stranger in the houſe brings it not within Statute.

2. Robbing any perſon by day or night, any perſon being in the ſame houſe, and put in fear.

Principals ouſt of Clergy *per* 1 *E.* 6. *c.* 12. in all caſes but challenging twenty; and by it 5 & 6 *E.* 6. in a foreign County

Couuty Clergy upon Examination taken away.

Acceſſaries, Clergy taken away *per* 4 & 5 *Ph. & Ma. c.* 4. in all caſes.

3. Robbing any perſon in his Dwelling-houſe, the owner, his wife, or children being in any part of the houſe, or within the precincts thereof, though they be not put in fear, and this extends to Booths in Fairs.

Principal ouſt of Clergy *per* 5 & 6 *E. 6. c.* 9. in caſes where Offenders found guilty: Principals therefore in other caſes ſhall have Clergy; as ſtanding mute, challenge *ultra* twenty.

Acceſſaries ouſt *per Stat.* 4 & 5 *Ph. & Ma. c.* 4.

4. Robbery to the value of 5 *s.* out of any Dwelling-houſe or Outhouſe thereunto belonging, though none in the houſe, *per Stat.* 39 *El.*

Principal ouſt of Clergy in caſe of Conviction, not of ſtanding Mute.

Acceſſaries ſhall have Clergy.

5. Larceny without any of theſe Circumſtances.

Horſe-ſtealing ouſt of Clergy, *per* 1 *E.* 6. *c.* 12. 2 & 3 *E.* 6. *c.* 32. Principal ouſt of Clergy.

Acceſſaries ouſted in no caſes. 31 *El.* 12. *ouſt Clergy d' Acceſſary.*

But other Larceny, not being Robbery or Cutpurſe, have Clergy.

6. In Rape, Clergy ouſt *per St.* 18 *El. c.* 7.

7. Though the Offence were within Clergy, yet if he had formerly been Convict and burnt in the Hand, the Stat. of 4 *H.* 7. *c.* 13. ouſts of Clergy, unleſs he were a perſon in Orders, and then he muſt produce his Certificate preſently, or by a time prefixt.

And ſee the Stat. 34 & 35 *H.* 8. *c.* 14. for the manner of the Certificate of ſuch Conviction and Attainder.

And

And though Stat. of 32 *H.* 8. *c.* hath put men in Orders in the ſame condition with others, in reference to Clergy; yet as to this point the Stat. 4 *H.* 7. the clauſe of the Statute 1 *E.* 6. *c.* 12. doth give a perſon in Orders his Clergy the ſecond time in all caſes, but 1. challenge above twenty; 2. Outlary.

3. When Clergy ſhall be allowed.

Now the uſe is not to put party to challenge Clergy till he hath pleaded, and Inqueſt thereupon taken.

1. For advantage of party if acquitted.
2. For advantage to King; for forfeiture if Convict.

2. It may be allowed in Diſcretion, though party challenge not.

Allowed under Gallows, or where Judgment *pain fort & dure* given, or where challenge above twenty, *vid. Cr. Jur'* 12 *pag.*

Allow

Allow ſouth Gallows per Juſt B. R. meſne Goal Delivery mes puit apres Judgment devant adjournment, Dy. 205.

4. The Judge.

The Ordinary is but Miniſter, the Judge at Common Law is the Judge when and where to allow of Reading.

In ancient time the Conſequent was delivery to Ordinary, either to make Purgation, or *abſque Purgatione*, as caſe required.

But by Stat. 18 *El. c.* 7. now only burnt in the Hand, which hath theſe effects;

1. Enables Judge to deliver him out of Priſon; but yet if he ſee cauſe, he may detain him till he find Sureties of good behaviour, *per Stat.* 3 *H.* 5. *c.* 1.

If Clergy within year, he is to be bailed or committed at diſcretion, till year be paſt.

2. It

2. It gives him a Capacity to purchaſe Goods, and retain the profits of his Lands.

But the Goods he had at time of Conviction are forfeit.

3. It reſtores him to his Credit.

Hob. Rep. Searle's Caſe.

Pleas

Pleas to Felony.

1. DEMURRER.
2. Pleas in Abatement and Ba
3. General Iſſue.

1. For Demurrers.

It amounts to a Confeſſion of th Indictment, as laid; therefore if In dictment good, Judgment againſt Priſoner, and Execution.

2. For Pleas in Abatement.

St.P.C. 181. If Priſoner plead Miſnomer of his Surname unto an Appeal, it goes in Abatement; but in caſe of Indictment he ſhall be put to anſwer the Treaſon or Felony.

1 H.5.5.

But Miſnoſmer of the Chriſtian Name goes in Abatement; and if it

it be confeſſed by King's Attorney, as found, Indictment falls. 11 *H.*4. *Coron.* 88.

But then he muſt give his true Name, and by that Name he may be forthwith Indicted.

Pleas in Barr.

Auterfoits Acquit.

If a perſon be acquit upon an inſufficient Indictment or Appeal, yet upon a new Indictment he may be Arraigned upon the ſame Felony. 4 *R. Vaux*'s Caſe. St. P. C. 106.

2. *Auterfoits acquit* for the ſame Felony, no Barr to an Indictment or Appeal of another Felony, &c. though committed before Acquittal.

3. *Auterfoits acquit* as Principal, no Barr to an Indictment againſt him as Acceſſary to the ſame Felony after; but it ſeems he cannot be Indicted as Acceſſary before.

4. In

4. In an Appeal of Death or other Felony, *Auterfoits acquit*, upon an Indictment for the ſame Felony, was a good Barr in all Caſes; therefore if an Appeal was pending, Court would ceaſe Arraignment of Priſoner upon an Indictment till it was determined: Or though no Appeal pending, yet in caſe of death, would ſurceaſe till year paſt.

But at this day *Auterfoits acquit* in an Indictment of Death no Barr to an Appeal, *per Stat.* 3 *H.*7.*c.*1. for the Priſoner notwithſtanding the Acquittal; but in other Appeals that ſtands Barr to an Appeal.

5. But *Auterfoits acquit* in an Appeal, Barr to an Indictment of ſame Felony.

1. Unleſs Appeal be Erroneous in Subſtance.
2. Unleſs Appeal be by a wrong Perſon.

3. Ap-

3. Appeal be by Battel, and in theſe caſes he may be Indicted again.

6. He that pleads this Plea, need not have Record *in poigne*, becauſe it goes in Barr.

7. Though there be variance between Indictment, &c. if it be ſuch as may admit of an Averment, there it may be pleaded.

Variance in the Name if *Conus per un name & auter*, variance in day of Felony ſuppoſed to be committed.

Variance in the place, but by Opinion 4 *H.* 5. acquit of Larceny in one County no Barr in another.

Auter.

Auterfoits Convict or *Attaint.*

1. Where a Barr to the ſame Felony.

1. *Auterfoits attaint* a Barr to an Indictment, for the Effect is to obtain the death of the party; but *vid.* no Barr in Appeals.

C. P. C. 213.

2. *Auterfoits convict* by Verdict or Confeſſion of Manſlaughter in an Indictment, and had Clergy, Barr in Appeal, though it be of Murder, forfeit the ſame in both, though differ in degree.

4 E. 45. *Trigg's Caſe.*

2. Where a Barr to an Arraignment for another Offence.

1. *Auterfoits attaint* of Felony no Barr to Arraign him of Treaſon committed before Felony for King's Intereſt.

C. P. C. 107.

And

And it ſeems if Treaſon was committed after Felony, then he ſhall be Arraigned of the Treaſon, for the Offence is different. C.P.C.213.

2. *Auterfoits attaint* of one Felony bar to an Arraignment of Felony: but this hath theſe Exceptions:

1. Where the firſt Attainder is pardoned, there he muſt be Arraigned of the former Felony, though omitted before. S.P.C.66. 107.
2. In caſe of Appeal he ſhall be Arraigned at every one of their Suits, notwithſtanding he be Attainted at one Suit.

The like it ſeems upon Indictment of Robbery, becauſe *per* Stat. party is to have reſtitution.

3. *Auterfoits convict*, and had Clergy after Stat. 25 *E.* 3. *c.* 5. had been a barr to an Arraignment of a-

nother Felony, though not within Clergy. *Dy.* 214.

But now *per Stat.* 8 *El. c.* 4. after Purgation, and 18 *El. c.* 7. burning in the Hand, he ſhall be put to anſwer former Felonies not within Clergy.

And note, he that pleads a Plea in barr to an Indictment or Appeal that confeſſeth not the Felony, ſhall plead over to the Felony; otherwiſe if it confeſſeth Felony, as Pardon or Releaſe.

Par-

Pardons.

ARE either of Courſe or Right, ſuch are

1. For a perſon Convict of Manſlaughter, or *ſe defendendo.*

2. An Approver that vanquiſheth Appellee.

Pardons of Grace, ſome things requiſite to their allowance per Stat.

1. *Per Stat.* 13 *R.*2. *c.* 1. Pardon of Murder, Rape, or Treaſon muſt be eſpecially expreſſed in the Pardon, otherwiſe it ought not to be allowed in ſuch caſes.

2. *Per Stat.* 10 *E.* 3. *c.* 2. there muſt be Surety of good bearing,

otherwiſe Charter void; but ſpecial *Non obſtante* may prevent it.

Matter at Common Law conſiderable.

1. Charter of Pardon no barr of an Appeal; and if party be Outlawed in Appeal, and King pardon, he ſhall have a *Scire Facias* againſt Appellor, who may pray Execution notwithſtanding ſuch Pardon; but if *ret' feci*, and appears not, that Appellee ſhall upon Pardon be diſcharged.

2. Pardon of all Felonies is no barr to Exceptions, if the Felon be Attaint; yet an Exception of all Burglaries, except the Burglary for which the party is Attainted.

3. Pardon of all Attainders not good with a Pardon of the Felony.

4. The Pardon of Felony reciting in the Pardon that the party is Indicted, and he is not, this is void.

5. King may pardon the burning in the hand in Appeal.

Pleading

Pleading the Pardon.

HE that pleads a General Pardon by Parliament, wherein are Exceptions, muſt averr that he is none of the perſons excepted.

But of General Pardon by Parliament without Exception Court *ex Officio* muſt take notice.

He that pleads a Particular Pardon,

1. Muſt ſhew it under Seal.

2. Muſt have a Writ of Allowance.

3. If vary, muſt averr that the ſame perſon.

Thus far of Pleas in Barr upon Indictments or Appeals; now we come to Pleas to the Fact,

Not Guilty.

1. Regularly he that pleads any ſpecial matter in Barr in Caſes Capital, that confeſſeth not the Felony, notwithſtanding the Plea found againſt him, the Felony ſhall be enquired of, and therefore he ſhall plead over to the Felony.

2. The immediate conſequent to this Plea is Trial, and that is either

By { Countrey. Peers. Battel.

1. Concerning Trial *per patriam*; and therein,
   1. Where Iſſues tried.
   2. What Proceſs againſt Jury.
   3. Before whom.
   4. Challenge.
   5. Evidence to be given.
   6. Verdict.

Trial.

Trial.

1. WHERE Tried.

1. For Trial of foreign Treaſons and foreign Acceſſaries, or ſtrokes in one County, and death in another, *v. ſupra* in Indictments.

For Trial foreign Pleas *per Stat.* 20 *H.* 8. *c.* 14. made proper to all, 32 *H.* 8. *c.* 3.

Foreign Pleas pleaded by a perſon Indicted of Felony, and Triable *per* County, ſhall be tried where party is Arraigned; but it is now in Treaſon triable in foreign County by vertute of Stat. 1 & 2 *Ph.* & *Ma.*

Proceſs againſt Jury.

1. Juſtices of Goal Delivery have their Pannel returned by Sheriff, without any Precept, by a bare Award; but Juſtices of Oyer and Terminer not.

2. *Per bon Opinion*, Juſtices of Peace, and Oyer and Terminer, cannot make their *Venire Facias* to try any Iſſue retornable the ſame Seſſions; but Juſtices of Goal Delivery clearly may.

3. If ſeveral perſons Arraigned upon an Indictment or Appeal, and they ſeverally plead Not Guilty, Plaintiff may take out one *Venire Facias*, or ſeveral.

4. If *Venire Facias* be joint, and Challenge by one drawn againſt all.

5. Though Pannel be joint, and *Tales* awarded, yet Court of Goal Delivery may after ſend the Pannel to prevent that Incumbrance.

6. In

6. In Appeals, if after Iſſue, Plaintiff tries it not, a *Venire Facias* by *Proviſo* may be for Defendant; yet upon a *Venire* Plaintiff may have a *Tales*.

Tales.

1. If a full Jury appear not, or be Challenged in Indictment or Appeal, Plaintiff may have a *Tales*.

2. Upon Indictment or Appeal, becauſe Defendant may challenge peremptorily, *Tales* may be granted larger then principal Pannel, as forty *Tales*, 14 *H.* 7. 7.

3. But ſucceeding *Tales* muſt be leſs than former, unleſs the former be quaſhed, and then the ſame number with that which is quaſhed.

4. If any of Jury die before ſworn, a new *Tales* grantable.

Be-

Before whom.

1. A *Niſi prius* not grantable where King Party, unleſs prayed by Attorney.

2. *Per Stat.* 14 *H.* 6. *c.* power to Juſtices of *Niſi prius* to give Judgment in Felony and Treaſon tried before them.

3. *Per Stat.* 42 *E.* 3. *c.* 7. Enqueſt in Aſſize and Goal Delivery may be taken before the Pannel returned in that Court, but not in other Caſes.

Chal-

Challenge of Array or Polls.

1. EX *parte Regis per Stat.* 33 *E.* 1. *c.* King ſhall not Challenge without Cauſe; but yet he is not compellable to ſhew cauſe till Pannel peruſed.

2. *Ex parte priſonarii*, the Challenge is either Peremptory, or upon Cauſe.

I. Peremptory Challenge.

1. Peremptory Challenge not allowable, but when life of Priſoner comes in queſtion, and therefore not upon Collateral Iſſues.

2. At Common Law he might have challenged peremptorily 35 under three full Juries; and if he challenged above, he ſhould have Judg-

Judgment to be hanged, 3 *H.* 7. 12.

But *per Stat.* 22 *H.* 8. *c.* 4. made perpetual, by 32 *H.* 8. *c.* it is reduced to 20; and now if he Challenge above 20, he ſhall not be hanged, but his Challenge Over-ruled, and he put upon his Trial; yet *vid. Statham Coron' contr'.*

S.P.C. 227.

3. In Caſes of Treaſon and petty Treaſon, the Challenge of 35 reſtored *per Stat.* 1 & 2 *P.* & *M. c.* 10.

II. Challenge for Cauſe, we mention but

1. Cauſe of inſufficiency *per St.* 2 *H.* 5. *c.* 3. 40 *s. per Ann.* required in County; but this, as to Aliens, corrected by 8 *H.* 6. and *ultra* in Cities by Stat. 23 *H.* 8. *c.* 13. Goods to value of 40 *l.*

2. Unindifferency.

Indictors not to be of Jury *per Stat.* 25 *E.* 3. *c.* 3.

3. In reference to an Alien, & *medietat' linguæ*, where

1. In no Caſe Indictor ought to be *de medietat' linguæ.*

2. In

2. In Treaſon trial *per medietat' linguæ rep. per St.* 1 & 2 *Ph. & Ma. quære ad* Appeal 28 *E.* 3. in that Caſe.
3. In Appeal an Alien againſt an Alien no *medietat' linguæ.*
4. Scot no Alien, to have *medietat' linguæ.*
5. Jurors need not be of ſame Nation, but any Aliens.
6. He that will have advantage of Trial *per medietat' linguæ* muſt pray it, otherwiſe he cannot have benefit by way of Challenge. *Dy.* 304. 357.
7. *Egyptians* excluded from the Trial *per* 1 & 2 *Ph. & Ma. c.* 4.

Evi-

Evidence to petty Jury.

1. IN Caſe of Treaſon
There muſt be two Accuſers or Witneſſes *per Stat.* 1 *E.* 6. *c.* 12. & 5 *E* 6. *c.* 7. and this ſtands notwithſtanding Stat. 1 & 2 *Ph.* & *Ma. c.* 11. but only in Caſe of Treaſon for Counterfeiting Coin.

Thoſe Witneſſes muſt be only by hearſay.

2. In Caſe of Felony.
   1. What allowed as Evidence. *per Stat.* 1 & 2 *Ph.* & *Ma. c.* 13. & 2 & 3 *Ph.* & *Ma. c.* 10. the Juſtices have power to Examine Offenders and Informers.
   2. The Examination of the Offender not upon Oath, but Subſcribed by him.

3. Ex-

3. Examination of others muſt be upon Oath.
4. This muſt be certified by Juſtices.
   1. If it be a ſmall Felony, to Seſſions.
   2. If it be a great Felony, &c. to next Goal Delivery.
5. Theſe Examinations, if perſons dead or abſent, may be given in Evidence.

   But Prudence to have the Juſtice or his Clerk ſworn to truth of Examinations.

6. But Examinations taken upon Cauſe of Divorce for a forcible Marriage, not allowed to be read upon an Indictment upon 3 *H.* 7. for ſame Marriage.

2. By whom.
   1. Wife, or her Examination, not to be uſed for or againſt her Husband.
   2. The Examination of an Infant of Thirteen, nay of Nine, allowed in ſome Caſes.
   3. One Attaint of Conſpiracy, Forgery, or Perjury not allowed a Witneſs.
   4. One duly ſet on Pillory. C.P.C.219.

3. In what manner.

   1. Evidence for King always upon Oath, but Evidence for Priſoner not upon Oath; yet no known Law that reſtrains it: But by ſome Statutes in ſome Caſes, Evidence for Priſoner upon Oath, as 31 *El. c.* 4. 4 *Jac. c.*

2. The Confeſſion of the Offender taken upon Examination, Evidence with Oath not of the Informer.

4. Where Evidence maintains the Indictment.

1. If the Indictment be of a Felony at one day, though the Evidence be of another day, the Jury may find generally againſt Priſoner, and leave the perſon that is intereſſed in point of time to falſifie; or the Jury may find the true day upon their Verdict, and then the forfeiture ſhall relate thither.
2. If the Indictment lay the Felony at one place, the Evidence proving the Fact at another place in the ſame County, maintains the Indictment.

3. If the Indictment and Evidence differ in *ſpecie mortis*, then it maintains it not as Indictment of Poiſoning, Evidence of ſtabbing maintains it not.

C.P.C. 135. But if the Indictment be of poiſoning with one kind of Poiſon, and the Evidence of another; or if the killing with a Dagger, and the Evidence is of killing with a Staff, there it maintains the Indictment, for it agrees in ſubſtance and kind.

9 R. Macks C.

The like of Acceſſary before, though Poiſon or Weapon differ.

4. Indictment that *A.* gave a mortal blow, and *B. C.* and *D.* were *preſentes abettantes*, Evidence that *B.* gave the blow, and *A. C.* and *D. preſentes & abettantes*, yet it maintains the Indictment.

5. In-

5. Indictment of *A.* as Acceſſary to *B.* and *C.* Evidence proves him only Acceſſary to *B.* maintains the Indictment. 9 R. Sanchers.

6. Indictment of Murder, *ex malitia præcogit'*, Evidence of malice in Law, as killing an Officer without provocation, yet maintains the Indictment.

7. Evidence upon Statute of ſtabbing, 21 *Jac.* Evidence that the dead ſtroke firſt, yet Evidence to mantain Indictment, 23 *Car' Howards.*

8. Two Indicted as Principals, Evidence proves one as Acceſſary before, he ſhall be diſcharged of that Indictment. 28 *H.* 8. 5.

9. *Vid. Stat.* 21 *Jac. c.* 27. Mother endeavouring to conceal the death of her Baſtard-child, ſhall ſuffer death as in caſe of Murder, unleſs ſhe prove by one Witneſs that

Child was born dead.

Vide Act. 17 *Car. in fine*, for the further Relief of his Majesties Army in the Northern parts, Act continued till end of next Sessions, continued over till some Act of Parliament for their continuance or discontinuance.

Ver-

Verdict.

VERDICT in Caſes Capital.

1. It muſt be given, and Jury cannot be diſcharged till it be given. St..P. C. 165.

2. It muſt be given openly in Court, and no privy Verdict.

3. It may be found Specially, as an Indictment of Murder, the Jury may find him Guilty

1. Of Manſlaughter.
2. *Per Infortunium.*
3. *Se Defendendo.*

But then it muſt find the manner of it, that Court may Judge thereof; ſo to the value or manner of the Larceny.

Now we ſhould come to Tri-al

By { Battel. / Proceſs.

Vide the whole Proceſs there-of, *C. P. C.* 27.

Judgment

Judgment in ſeveral Caſes.

I. *IN High Treaſon.*

In all Caſes, except Counterfeiting Coin, Drawn, Hang'd, Entrals taken out and burnt, Head cut off, Body quartered, and Quarters hang'd up. C.P.C. 218, 219.

2. *In Counterfeiting Coin.*

Drawn and Hang'd; but the Judgment of Women in thoſe Caſes is Drawn and Burnt.

II. *In Petty Treaſon.*

1. For a Man, Drawn and Hang'd.
2. For a Woman, Drawn and Burnt.

III. *In Felony.*

Hang'd till Dead, and this cannot be altered by King to Beheading.

IV. *In Petty Larceny.*

To be Whipt, Forfeits Goods.

V. *Death per Infortunium.*

No expreſs Judgment, yet Forfeits Goods.

VI. *Death ſe defendendo.*

No expreſs Judgment, yet Forfeits Goods.

Miſ-

Miſpriſion of Treaſon.

Forfeits Goods, Forfeits Profits of Land, during Life perpetual Impriſonment.

Vide for Seiſure of Goods.

1. Not before Indictment.
2. Not removed before Attaindor.

1 *R.* 3. *c.* 3.

Fal-

Falſifying of Attainders.

1. BY the Party, by Writ of Error.
2. What others may falſifie it?
   1. A Purchaſer may falſifie an Attainder of the Felon by Outlary or Confeſſion in this point, if he Purchaſe before Attainder, and after time of Felony ſuppoſed.
   2. A Purchaſer *meſne* between the time of Felony committed and the Attainder, by Verdict cannot falſifie in point of Offence, but he may for the times.
   3. If Attainder was by ſuch as had no good Commiſſion, the Party himſelf may falſifie Attainder, *Caſ. Com. Leiceſt.*

4. If

4. If the Principal Attainted, and then Acceſſary and Principal reverſe the Attainder, the Attainder of the Acceſſary is *eo ipſo* avoided, and his Heirs may have *Mortdanc'* againſt Lord *per Eſcheat.*

5. Attaint of Treaſon, and then the Treaſon is pardoned by Act of Parliament, the Party or his Heir ſhall falſifie Attainder.

6. In Caſe of Goods

1. *Fugam fecit* found by Coroner cannot be falſified, though upon his Arraignment it be found he did not fly; but if Indictment be void or inſufficient, no Forfeiture.

2. A man Indicted before Juſtices of Oyer and Terminer acquit by Verdict, and found he fled, and the particulars of his Goods found, they may be Traverſed. St.P.C. 148.

3. De-

3. Default till *Exigent*, though after acquitted, Goods Forfeited; for it is a *fugam fecit* in Law.

But if the Indictment, Appeal, or Proceſs inſufficient, their Forfeiture ſaved; ſo if it be reverſed by Errour, or pardoned before *Exigent*.

Memorandum, Flight or *Exigent* in caſe of Petty Larceny, Forfeits Goods.

Ex-

Execution and Reprieve.

1. EXECUTION muſt be purſuant to Judgment, and cannot be altered by King, as from Beheading to Hanging. C.P.C.212. 217.

2. But King may pardon part of the Execution; as in Treaſon, he may pardon all but Beheading.

3. It muſt be done by proper Officer.

4. If a Woman, Convict of Treaſon and Felony, be quick with Child, ſhe ſhall have one Reprieve, but not ſecond time. C.P.C.17.207., S.P.C.198.

Un

Un eſt trove culp' de Treaſon, Felony, &c. & Reprieve devant Judgment Roy Mort' uncore Judgment poit.

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